

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:

S. CICCARELLI

) OTA Case No. 20066307
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OPINION

Representing the Parties:

For Appellant: Robert J. Dibbell, Representative

For Respondent: Joel Smith, Tax Counsel III

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, S. Ciccarelli (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant's claim for refund of \$5,995¹ for the 2015 taxable year.

Appellant waived the right to an oral hearing; therefore, the Office of Tax Appeals (OTA) decides the matter based on the written record.

ISSUE

Has appellant shown error in FTB's denial of his claim for refund?

FACTUAL FINDINGS

1. Appellant filed a timely 2015 California Resident Income Tax Return.
2. Subsequently, FTB received information from the IRS that appellant's federal adjusted gross income was increased by \$68,174 in gambling income and \$670 in taxable wages, neither of which were reported on appellant's original state and federal tax returns.
3. FTB adjusted appellant's state tax liability accordingly and issued a Notice of Proposed Assessment (NPA) proposing additional tax of \$6,489, plus interest.

¹ Appellant claimed an overpayment of \$5,995 on the amended return filed on August 15, 2019. On appeal, appellant submits a second amended return claiming a refund of \$5,932; however, it does not appear that appellant filed this second claim for refund with FTB.

4. After the NPA became final and collection action began, appellant filed an amended California tax return on August 15, 2019, that included the unreported gambling income but not the unreported wage income of \$670, increased appellant's itemized deductions from \$4,044 to \$68,174, and reported an overpayment of \$5,995.
5. In September 2019, FTB received a payment of \$7,497.85 and transferred in \$285.03 from taxable year 2016, which satisfied appellant's balance due for the 2016 taxable year.²
6. On March 26, 2020, FTB denied appellant's claim for refund, and this timely appeal followed.
7. As of December 8, 2022, the IRS had not modified or canceled its assessment. Specifically, the IRS has not made an adjustment to appellant's federal tax liability after reviewing appellant's amended returns.
8. On appeal, appellant submits an amended federal return, which includes the unreported income but also reports \$74,526 of gambling loss deductions. Appellant also submitted a copy of a second amended California tax return that matched the information reported on his amended federal return. After the \$74,526 of gambling losses claimed by appellant as itemized deductions, appellant reported an overpayment of \$5,932 and requested a refund.

DISCUSSION

R&TC section 18622(a) requires a taxpayer to concede the accuracy of federal changes to a taxpayer's income or state where the changes are erroneous. It is well established that a presumption of correctness attends FTB's determinations and that taxpayers have the burden of proving that such determinations are erroneous. (*Appeal of Vardell*, 2020-OTA-190P.) Income tax deductions are a matter of legislative grace, and a taxpayer who claims a deduction has the burden of proving by competent evidence that he or she is entitled to that deduction. (*Ibid.*) To meet that burden, a taxpayer must point to an applicable statute and show by credible evidence that the transactions in question come within its terms. (*Appeal of Jindal*, 2019-OTA-372P.) Unsupported assertions cannot satisfy a taxpayer's burden of proof. (*Appeal of Vardell*, *supra.*)

² The total collected of \$7,782.88 included \$6,489 of additional tax per the NPA which has become final, applicable interest of \$952.38, a collection cost recovery fee of \$317.00, and \$24.50 which was refunded to appellant.

A taxpayer's failure to produce evidence that is within his or her control gives rise to a presumption that such evidence, if provided, would have been unfavorable to the taxpayer's case. (*Ibid.*)

Appellant admits that he failed to report \$68,174 in gambling income and \$670 in taxable wages on his original tax returns. Appellant contends that the IRS will modify its assessment once his federal amended return is reviewed. Appellant asserts, via amended tax returns, that he is entitled to a refund because his gambling losses completely offset the additional reported income.

FTB asserts that appellant has not shown that the IRS made any adjustments after appellant filed his amended federal return. FTB acknowledges that even if the IRS did not modify or cancel its assessment, appellant could provide evidence to show that he is entitled to claim the gambling losses. Having provided no evidence of gambling losses, FTB concluded that appellant did not prove its assessment was in error, and therefore, appellant is not entitled to a refund.

Despite appellant's claims that the IRS would be modifying his federal assessment, as of December 8, 2022, the IRS has not done so. Appellant's IRS transcript shows that amended federal returns were filed on April 18, 2019, August 16, 2019, and on September 23, 2019, but no adjustments were made. Additionally, FTB invited appellant to directly provide evidence to support his claimed gambling loss deductions, but appellant failed to respond. OTA requested a conference with the parties to determine whether appellant could produce proof of gambling losses. Appellant failed to respond to the request for a conference and did not provide any evidence other than copies of the previously filed amended tax returns.


Appellant has provided nothing to show he is entitled to the claimed gambling loss deductions and has not shown error in FTB's assessment. Appellant is therefore not entitled to a refund.

HOLDING

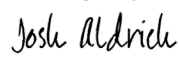
Appellant failed to establish error in FTB’s denial of his claim for refund.

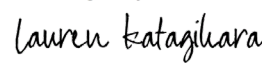
DISPOSITION

FTB’s denial of appellant’s claim for refund is sustained.

DocuSigned by:

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Teresa A. Stanley
Administrative Law Judge

We concur:

DocuSigned by:

48745BB806914B4
Josh Aldrich
Administrative Law Judge

DocuSigned by:

E595B34010D8470
Lauren Katagihara
Administrative Law Judge

Date Issued: 4/14/2023