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OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **J. MILLER**	) OTA Case No. 22029702)))))

OPINION

Representing the Parties:

For Appellant: J. Miller

For Respondent: Andrea Watkins, Legal Assistant

A. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, J. Miller (appellant) appeals an action by the Franchise Tax Board (respondent) proposing additional tax of $2,600, and applicable interest, for the 2017 tax year.

Appellant waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

ISSUE

Whether appellant has established error in respondent's proposed assessment of additional tax, which is based on a final federal determination.

FACTUAL FINDINGS

1. Appellant filed a timely 2017 tax return, which reports wages of zero, federal and state adjusted income of zero, taxable income of zero, and total tax of zero. Appellant claimed total tax payments of $4,937 and requested a refund of tax in the same amount. Respondent issued the requested refund.
2. Subsequently, respondent received information from the IRS indicating that the IRS increased taxable income to include wages of $84,598 and Health Savings Account distributions of $1,494 for a total of $86,092.

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3. Respondent correspondingly issued a Notice of Proposed Assessment (NPA) to appellant based on the IRS's adjustment, which increased appellant's California taxable income by $86,092 and allowed a withholding credit of $1. This resulted in a proposed additional tax of $2,600.
4. Appellant protested the NPA. Respondent issued a Notice of Action (NOA), affirming the NPA.
5. This timely appeal followed.

DISCUSSION

Pursuant to R&TC 18622(c), a taxpayer must "concede the accuracy of a [final federal] determination or state wherein it is erroneous." It is well settled that a deficiency assessment based on a federal audit report is presumptively correct and that the taxpayer bears the burden of proving that the determination is erroneous. (*Appeal of Gorin*, 2020-OTA-018P.)

Appellant contends that the IRS is currently working on her account to correct its error and provided a letter from the IRS dated December 22, 2021, relating to the 2017 tax year, which states that the IRS needed more time to respond to appellant's inquiry. However, respondent has provided evidence that the IRS sent appellant a letter/notice on March 28, 2022. There is no indication that the federal assessment has been changed or revised.

Additionally, appellant maintains that the NOA is "void on its face;" that the NOA is a "fictional conveyance of language and does not apply" to her; and that the NOA has "no correct language performance in simple English, dictionary or glossary definitions." Appellant also contends that the R&TC does not apply directly to people but to federal employees; that she is not engaged in "self-employment" or in a "trade or business" and other similar contentions.

Appellant's contentions, and other similar arguments, have consistently been rejected by our predecessor, the Board of Equalization (BOE), and by OTA as frivolous and without merit. (See, e.g., *Appeal of Reed*, 2021-OTA-326P; *Appeal of Balch*, 2018-OTA-159P; *Appeals of Wesley, et al*. (2005-SBE-002) 2005 WL 3106917; *Appeal of Myers* (2001-SBE-001) 2001 WL 37126924; *Appeal of Castillo* (92-SBE-020) 1992 WL 202571; *Appeals of Bailey* (92-SBE-001) 1992 WL 44503; *Appeals of Dauberger, et al*. (82-SBE-082) 1982 WL 11759.) As such, appellant's contentions will not be discussed further, because "to do so might suggest that these arguments have some colorable merit." (*Crain v. Commissioner* (5th Cir. 1984) 737 F.2d 1417

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[discussing the reason courts often decline to refute frivolous taxpayer arguments with "somber reasoning and copious citation of precedent"].)

OTA has the statutory authority to impose a penalty of up to $5,000 if it finds that an appeal before it has been instituted or maintained primarily for delay or that a taxpayer's position in the appeal is frivolous or groundless. (R&TC, § 19714; see also Cal. Code Regs., tit. 18, § 30217(a).) Although OTA does not impose that penalty in this proceeding, appellant's positions and conduct in this appeal suggest that such a penalty may be warranted in the future should she file another appeal or petition for rehearing with OTA raising the same or similar issues.

Based on the foregoing, appellant has not established error in FTB's proposed assessment of additional tax.

HOLDING

Appellant has not established error in respondent's proposed assessment of additional tax, which is based on a final federal determination.

DISPOSITION

Respondent's action is sustained.

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Andrea L.H. Long
Administrative Law Judge

We concur:

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Teresa A. Stanley
Administrative Law Judge

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Michael Geary
Administrative Law Judge

Date Issued: 11/21/2022