

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 220911392  
I. THOMAS AND )  
L. THOMAS )  
\_\_\_\_\_ )

**OPINION**

Representing the Parties:

For Appellants: I. Thomas and L. Thomas

For Respondent: Andrea Watkins, Legal Assistant

L. KATAGIHARA, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, I. Thomas and L. Thomas (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$710 for the 2016 tax year.

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

**ISSUE**

Whether appellants have shown error in FTB’s denial of appellants’ claim for refund of additional tax that FTB assessed based on a final federal determination.

**FACTUAL FINDINGS**

1. The IRS adjusted appellants’ 2016 federal tax return to account for unreported income and a partially disallowed home mortgage interest deduction.
2. Based on this information, FTB issued, and mailed to appellants’ address of record, a Notice of Proposed Assessment (NPA) that made corresponding adjustments to appellants’ California income and deductions, as reported on their 2016 California income tax return, which resulted in a proposed additional tax of \$710, plus applicable interest.

3. Appellants did not timely protest the NPA, and consequently, the liability became final. FTB thereafter mailed a Final Notice Before Levy and Lien to appellants demanding payment.
4. Appellants then asserted that their originally filed 2016 California tax return was correct and submitted a copy of that return to FTB. Appellants also subsequently paid the outstanding tax of \$710 and the applicable interest.
5. FTB treated the re-submitted 2016 California tax return as a claim for refund and upon review discovered that, when compared to the information supplied by the IRS, appellants underreported their taxable income and overstated their deductions. FTB therefore requested that appellants provide information evidencing that the IRS's assessment was cancelled or reduced. Appellants did not respond to FTB's request.
6. Consequently, FTB denied appellants' claim for refund.
7. This timely appeal followed.

#### DISCUSSION

As a general rule, taxpayers bear the burden of proving entitlement to their claim for refund, which means they must not only prove that the tax assessment was incorrect but must also produce evidence to establish the proper amount of the tax due, if any. (*Appeal of Jali, LLC*, 2019-OTA-204P.) 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 settled that a deficiency assessment based on a federal adjustment is presumptively correct and that the taxpayer bears the burden of proving that FTB's determination is erroneous. (*Appeal of Valenti*, 2021-OTA-093P.) In the absence of credible, competent, and relevant evidence showing that FTB's determination is incorrect, it must be upheld. (*Ibid.*) The applicable burden of proof is by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(c).) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof with respect to an assessment based on a federal action. (*Appeal of Gorin*, 2020-OTA-018P.)

Here, FTB received information from the IRS that the IRS increased appellants' 2016 federal taxable income due to unreported income and a partially disallowed home mortgage interest deduction. FTB made conforming adjustments to appellants' 2016 California taxable

income, which resulted in a \$710 tax liability, plus applicable interest.<sup>1</sup> Because FTB’s assessment was based on federal adjustments, it is presumed correct, and appellants have the burden to show that FTB’s assessment was erroneous.

Appellants assert that they did not receive the “original notice” (which the Office of Tax Appeals (OTA) presumes refers to the NPA) and “had no opportunity to respond.” Appellants speculate that the original notice was placed in the wrong mailbox as the mailbox is shared with “a dozen other neighbors.”

OTA first notes that FTB mailed the NPA to appellants’ last known address of record pursuant to R&TC section 18416, which appears to be the address on appellants’ 2016 tax return because appellants have not produced evidence indicating otherwise. OTA additionally notes that FTB did not deny appellants’ claim for refund because it was untimely, and because appellants timely appealed FTB’s denial to OTA, appellants were not prevented from presenting evidence to prove entitlement to their claim for refund. Additionally, FTB requested and provided time for appellants to produce such evidence after accepting the claim for refund, but appellants did not respond to FTB’s request.

More importantly, appellants’ contention does not address the substantive issue here: whether appellants are entitled to a refund of amounts paid due to FTB’s assessment based on a final federal determination. Despite having had the opportunity to do so, appellants did not offer any evidence prior to or during the duration of this appeal indicating that the IRS cancelled or reduced its assessment, or that FTB’s assessment was otherwise incorrect. As appellants’ arguments do not attempt to refute the correctness of FTB’s assessment, and no evidence has been provided to establish FTB’s assessment was in error, appellants have not met their burden of proof.

---

<sup>1</sup> Pursuant to R&TC section 17071, California conforms to section 61 of the Internal Revenue Code relating to gross income, except as otherwise provided. In addition, R&TC section 17201 incorporates sections of the Internal Revenue Code relating to itemized deductions for individuals (i.e., Part VI of Subchapter B of Chapter 1 of Subtitle A of the Internal Revenue Code), except as otherwise provided.

HOLDING

Appellants have not shown error in FTB’s denial of appellants’ claim for refund of additional tax that FTB assessed based on a final federal determination.

DISPOSITION

FTB’s action is sustained.

DocuSigned by:  
*Lauren Katagihara*  
F595B34010D8470  
\_\_\_\_\_  
Lauren Katagihara  
Administrative Law Judge

We concur:

DocuSigned by:  
*Josh Aldrich*  
48745BB806914B4  
\_\_\_\_\_  
Josh Aldrich  
Administrative Law Judge

DocuSigned by:  
*Natasha Ralston*  
25F8FE08FF56478  
\_\_\_\_\_  
Natasha Ralston  
Administrative Law Judge

Date Issued: 4/10/2023