

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:

**T. BAKER AND
C. BAKER**

) OTA Case No. 220610491
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OPINION

Representing the Parties:

For Appellants:

T. Baker
C. Baker

For Respondent:

Cristina Rubalcava, Staff Operation
Specialist

A. KLETTER, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, T. Baker and C. Baker (appellants) appeal an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$2,357 and applicable interest for the 2017 tax year.

Appellants waived the 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 proposed assessment of additional tax, which is based upon a final federal determination.

FACTUAL FINDINGS

1. Appellants timely filed their joint 2017 California income tax return.

2. FTB received information from the IRS that it had audited and determined that appellants failed to include \$28,036 in cancellation of debt (COD) income collectively reported on three federal Forms 1099-C, Cancellation of Debt.¹ Accordingly, the IRS increased appellants' federal adjusted gross income (AGI) by \$28,036. On March 23, 2020, the IRS's determination became a final federal determination for the 2017 tax year.
3. On January 21, 2021, FTB issued a Notice of Proposed Assessment (NPA) proposing to follow the IRS adjustment and include in appellants' California AGI the \$28,036 in unreported COD income.²
4. Appellants filed a timely protest. FTB acknowledged the protest and affirmed its position in a letter dated January 25, 2022. On May 6, 2022, FTB issued a Notice of Action affirming the NPA.
5. Appellants timely appealed.

DISCUSSION

When the IRS makes a final federal determination, a taxpayer must concede the accuracy of the federal changes to a taxpayer's income or state where the changes are erroneous. (R&TC, § 18622(a).) It is well settled that a deficiency assessment based on a federal adjustment to income is presumed to be correct and a taxpayer bears the burden of proving that FTB's determination is erroneous. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509, 514; *Appeal of Valenti*, 2021-OTA-093P.) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof. (*Appeal of Gorin*, 2020-OTA-018P.) In the absence of credible, competent, and relevant evidence showing that FTB's determination is incorrect, it must be upheld. (*Appeal of Valenti, supra.*)

¹ The \$28,036 in COD income was comprised of \$5,959 reported by Midland Funding LLC, \$6,525 reported by Ally Financial Inc., and \$15,552 reported by Chase Bank USA NA. Copies of the Forms 1099-C are not in the record, although the IRS wage and income transcript provides a summary.

² For personal income tax purposes, California generally conforms to Internal Revenue Code (IRC) section 62, defining federal AGI, except as otherwise provided. (R&TC, § 17072(a).) A taxpayer must generally report the same federal AGI from the federal return on his or her California return, subject to California-specific addition and subtraction modifications.

California conforms to the inclusion of COD income, known as "income from discharge of indebtedness" in the IRC, to gross income. (IRC, § 61(a)(12); R&TC, § 17071.) COD income is recognized in the year the debt is cancelled. (*Bui v. Commissioner*, T.C. Memo. 2019-54.)

Here, FTB received information from the IRS that appellants' federal AGI was increased for the 2017 tax year. Specifically, the IRS increased appellants' federal AGI by \$28,036 to include unreported COD income. On March 23, 2020, the IRS determination became a final federal determination.

Appellants do not contest—and provide no supporting evidence—that they did not receive the COD income at issue, or that the IRS subsequently abated its assessment. On appeal, FTB provides a copy of appellant T. Baker's IRS wage and income transcript³ which records the COD income. FTB also provides a copy of appellants' joint 2017 IRS account transcript dated June 16, 2022, which includes the COD income.⁴ The IRS account transcript records appellants' federal AGI as \$28,046⁵ higher than the federal AGI reported on appellants' originally filed 2017 California tax return. The IRS account transcript contains no reduction following the final federal determination on March 23, 2020.

Instead, appellants claim that FTB ignored additional federal changes which should have been reflected in its proposed assessment. They claim that appellant T. Baker's employer issued him a federal Form 1099-MISC which erroneously reported \$11,550⁶ in wage income as miscellaneous income. On appeal, appellants attach a copy of their 2017 federal tax return, a copy of appellant T. Baker's 2017 Form W-2, a copy of correspondence appellants claim they sent to the IRS stating that appellant T. Baker received only W-2 wages and received no miscellaneous income from his employer, and a copy of their joint 2017 IRS account transcript

³ FTB's copy is dated June 16, 2022, and does not include all the pages. The record contains a copy of appellant T. Baker's IRS wage and income transcript dated March 2, 2021, which appellants submitted at protest. An IRS wage and income transcript records income information which third parties report to the IRS on federal Forms W-2, 1099, etc.

⁴ An IRS account transcript shows information such as filing status, taxable income, and payment types. It also shows changes made by the IRS and taxpayers after the original return is filed. It is different than the IRS wage and income transcript.

⁵ The IRS also increased appellants' federal AGI by \$10 to reflect unreported interest income. FTB did not make a corresponding adjustment. This adjustment is not at issue and the Office of Tax Appeals (OTA) does not discuss it further.

⁶ In briefing, FTB states that appellants claim a federal adjustment of \$11,500, but this appears to be a typographical error.

dated May 19, 2022.⁷ Appellants contend that the erroneous reporting was resolved, and that the IRS accordingly reduced appellants' federal AGI by \$11,550 in a letter.

Appellants fail to provide credible and competent evidence that the IRS reduced appellants' federal AGI by \$11,550. Though the 2017 Form W-2 issued by appellant T. Baker's employer matches the income information recorded on appellant T. Baker's IRS wage and income transcript dated March 2, 2021, this does not show that there was a reduction in appellants' federal AGI. Indeed, the March 2, 2021 wage and income transcript records miscellaneous income in the amount of \$11,550.⁸ Additionally, appellants concede they have no record of the IRS letter which they claim absolved them of the additional reported miscellaneous income. Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof. (*Appeal of Gorin, supra.*) As described above, the copy of the IRS account transcript dated June 16, 2022, contains no record of a reduction in appellants' federal AGI.

Thus, appellants do not show with credible evidence that the federal determination upon which FTB based its proposed assessment is incorrect, nor that FTB's adjustment is erroneous.

⁷ Appellants also provide an incomplete 2017 account transcript dated May 19, 2022. It fails to show the final federal determination or any subsequent IRS action.


⁸ FTB's copy of the wage and income transcript, dated June 16, 2022, is incomplete, and OTA cannot confirm whether other pages of the transcript record the \$11,550 in miscellaneous income (or wage income) from appellant T. Baker's employer.

HOLDING

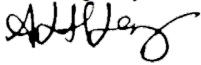
Appellants have not shown error in FTB’s proposed assessment of additional tax, which is based upon a final federal determination.

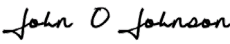
DISPOSITION

FTB’s action is sustained.

DocuSigned by:

D17AEDDCAAB045B...
Asaf Kletter
Administrative Law Judge

We concur:

DocuSigned by:

272945E7B372445...
Andrea L.H. Long
Administrative Law Judge

DocuSigned by:

873D9797B9E64F1...
John O. Johnson
Administrative Law Judge

Date Issued: 5/10/2023