

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
N. PROPERT

) OTA Case No. 220710768
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OPINION

Representing the Parties:

For Appellant: N. Propert

For Respondent: Andrea Watkins, Tax Counsel

S. BROWN, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, N. Propert (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$987 and applicable interest for the 2017 tax year.

Appellant elected to have this appeal determined pursuant to the procedures of the Small Case Program. Those procedures require the assignment of a single administrative law judge. (Cal. Code Regs., tit. 18, § 30209.1.) Appellant waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

ISSUE

Whether appellant has shown error in FTB’s proposed assessment, which is based on a federal adjustment.

FACTUAL FINDINGS

1. Appellant timely filed her California Non-resident or Part-Year Resident Income Tax Return for the 2017 tax year, reporting a federal adjusted gross income (AGI) of \$76,256, which included California wages of \$55,835. On this tax return, appellant reported that her residency changed from California to Oregon on September 26, 2017. Attached to the return were Forms W-2 reflecting taxable wages totaling \$76,434 (equal to the wages reported on appellant’s federal tax return) and total California tax withheld of \$3,222.

Also attached was a Form 1099-R showing a gross distribution of \$37,070 from a pension, annuity, or retirement account, with \$8,974 of this amount constituting a taxable distribution. Appellant reported the \$3,222 in California tax withholdings and claimed a \$346 refund. FTB accepted this return as filed and refunded the claimed \$346 overpayment.

2. Thereafter, FTB received information from the IRS that the IRS adjusted appellant's federal income tax return for the 2017 tax year. As reflected on a CP2000 Data Sheet and an IRS Account Transcript, the IRS disallowed appellant's deduction of \$178 for student loan interest and determined that appellant failed to report \$8,974 in taxable pension/annuity income; as a result, the IRS assessed additional federal income tax of \$4,033, plus applicable interest. Appellant did not report these changes to FTB.
3. Based on this information from the IRS, FTB adjusted appellant's California taxable income. FTB's adjustments reflect appellant's reported California tax withholdings. On July 13, 2021, FTB issued appellant a Notice of Proposed Assessment (NPA) that proposed additional tax of \$987, plus applicable interest.
4. Appellant timely protested the NPA, stating that she had correctly paid all California income tax that she owed.
5. In a letter dated March 15, 2022, FTB acknowledged appellant's protest and indicated that appellant should reply within 30 days to provide any information supporting her position. Appellant did not respond or submit any additional information. On June 9, 2022, FTB issued a Notice of Action, affirming the NPA.
6. This timely appeal followed.

DISCUSSION

When the IRS changes or corrects a taxpayer's federal tax return, the taxpayer must either concede the accuracy of a federal determination or state how the determination is erroneous. (R&TC, § 18622(a).) A deficiency assessment based on a federal audit report is presumptively correct and a taxpayer bears the burden of proving that the determination is erroneous. (*Appeal of Gorin*, 2020-OTA-018P.) The applicable burden of proof is by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(c).) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof. (*Appeal of Gorin, supra.*)

As relevant here, part-year residents of California are taxed on their worldwide income earned during the period they are residents, as well as on all income derived from California sources while they are non-residents. (R&TC, § 17041(b) & (i).) The rate of tax that is applied to the income of part-year residents that is subject to California taxation is determined by taking into account the taxpayer's worldwide income for the entire tax year. (*Appeal of Million* (87-SBE-036) 1987 WL 59534.) This method, known as the "California Method," does not tax out-of-state income received while a taxpayer is not a resident of California, but merely takes into account a taxpayer's "entire taxable income" for the year, including income from non-California sources, in determining the applicable tax rate. (R&TC, § 17041(b)(2).) The determined tax rate is then applied only to the income the taxpayer earned while a California resident and to any other California source income the taxpayer might have had. (*Appeal of Million, supra.*)

Here, FTB proposed to assess additional tax based on the federal adjustments detailed in the CP2000 Data Sheet and IRS Account Transcript. The evidence shows that the California tax return that FTB provided on appeal includes appellant's Forms W-2 reflecting taxable wages totaling \$76,434 (equal to appellant's reported federal wages) and a Form 1099-R showing a taxable distribution of \$8,974; thus, these documents support a finding that appellant received a taxable distribution of \$8,974 that was not included in the calculation of her taxable income on her California tax return.

FTB treated appellant's \$8,974 pension/annuity income as California source income. Because appellant was a California resident until September 26, 2017, any taxable pension/annuity income she received between January 1 and September 26, 2017, is California source income. The Form 1099-R shows that California state tax was withheld from this distribution, and appellant has not provided any argument or evidence indicating that she received the \$8,974 taxable pension/annuity income while she was an Oregon resident. Accordingly, the evidence indicates that FTB correctly calculated the proposed assessment of tax, and appellant has not provided evidence establishing error in either the IRS adjustment or FTB's determination.

Appellant may believe that, because California tax was withheld on her California taxable income, she should owe no additional California tax. However, appellant's California tax withholdings did not satisfy her California tax liability.

HOLDING

Appellant has not established error in FTB’s proposed assessment for the 2017 tax year.

DISPOSITION

FTB’s action is sustained in full.

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Suzanne B. Brown
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Suzanne B. Brown
Administrative Law Judge

Date Issued: 5/3/2023