

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

In the Matter of the Appeal of:	)	OTA Case No. 220811238
<b>G. GAVALDON AND</b>	)	
<b>C. GAVALDON</b>	)	
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**OPINION**

Representing the Parties:

For Appellants: G. Gavaldon and C. Gavaldon

For Respondent: Andrea Watkins, Legal Assistant

E. LAM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, G. Gavaldon and C. Gavaldon (appellants) appeal an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$682 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.

**FACTUAL FINDINGS**

1. Appellants timely filed their joint 2017 California resident income tax return.
2. FTB subsequently received information from the IRS indicating that it examined appellants' federal return for the 2017 tax year and adjusted appellants' income and deductions, which resulted in a tax deficiency. Appellants did not report the federal adjustments to FTB.

3. FTB issued to appellants a Notice of Proposed Assessment (NPA), which proposed to follow the IRS adjustment of increasing taxable income by \$29,951 of unreported pension or annuities income and disallowing \$639 of itemized deductions.
4. Appellants timely protested the NPA and enclosed a copy of an amended 2017 federal tax return, indicating that appellants adjusted for \$29,829 of the unreported pension or annuities income (in lieu of the NPA's \$29,951), and decreased taxable income in the amount of \$13,659 for additional itemized deductions (in lieu of the NPA's disallowance of \$639).<sup>1</sup>
5. FTB concluded that it appears that the IRS accepted the amended 2017 federal tax return as filed by appellants. FTB issued a Notice of Action (NOA) and accepted the same adjustments from appellants' amended 2017 federal return, resulting in \$682 of additional tax, plus applicable interest.
6. Appellants disagreed with the NOA. This timely appeal followed.

#### DISCUSSION

R&TC section 18622(a) requires taxpayers to report federal changes to a return and either concede the accuracy of the federal changes to the taxpayers' income or state where the changes are erroneous. It is well settled that a deficiency assessment based on a federal adjustment to income is presumed to be correct and the taxpayers bear the burden of proving that FTB's 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 not sufficient to satisfy taxpayers' burden of proof. (*Appeal of Gorin, supra.*) In the absence of credible, competent, and relevant evidence showing that FTB's determinations are incorrect, such determinations must be upheld. (*Appeal of Bindley*, 2019-OTA-179P.) The taxpayers' failure to produce evidence that is within the taxpayers' control gives rise to a presumption that such evidence is unfavorable to the taxpayers' case. (*Ibid.*)

Appellants appeal the proposed assessment of additional tax because “[appellants] are certain that [their] deductions may be higher.” However, appellants' contention does not address the correctness of the IRS audit or FTB's corresponding proposed assessment based on appellant's amended 2017 federal tax return. In particular, appellants provide no documentation

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<sup>1</sup> A complete amended 2017 federal tax return was not provided.

or other evidence that there are available deductions in excess from the \$13,659 of additional itemized deductions as reported by their amended 2017 federal tax return. Thus, appellants have not met the burden of proving that FTB’s adjustment based on the IRS’ accepted amended 2017 federal tax return was incorrect or that the IRS has changed its determination.

HOLDING

Appellants have not shown error in FTB’s proposed assessment of additional tax.

DISPOSITION

FTB’s action is sustained.

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Eddy Y.H. Lam  
Administrative Law Judge

We concur:  
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*Keith T. Long*  
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Keith T. Long  
Administrative Law Judge

DocuSigned by:  
*Amanda Vassigh*  
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Amanda Vassigh  
Administrative Law Judge

Date Issued: 5/19/2023