

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 21068049  
M. TANOUYE AND )  
S. TANOUYE )  
\_\_\_\_\_ )

**OPINION**

Representing the Parties:

For Appellants: M. Tanouye and S. Tanouye

For Respondent: Eric R. Brown, Tax Counsel III

For Office of Tax Appeals: Casey Green, Tax Counsel III

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, M. Tanouye and S. Tanouye (appellants) appeal an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$3,767.53, plus interest, for the 2016 taxable year.

Because appellants waived their right to an oral hearing, this matter is being decided based on the written record.

**ISSUE**

Whether appellants have established error in the proposed assessment for the 2016 taxable year.

**FACTUAL FINDINGS**

1. Appellants filed joint 2016 federal income tax and California personal income tax returns.
2. Appellants’ 2016 federal income tax return was examined by the IRS, which resulted in several adjustments due to unreported items of income by each spouse.
3. Based on these IRS changes, FTB issued a Notice of Proposed Assessment (NPA) that made corresponding adjustments to appellants’ 2016 California personal income tax

return, increasing appellants' California taxable income by \$62,502. The NPA imposed additional tax of \$3,767.53, plus interest.

4. After denying appellants' protest, FTB sent them a Notice of Action affirming the NPA.
5. FTB has no record of appellants applying for innocent spouse relief.

### DISCUSSION

A taxpayer must either concede the accuracy of an IRS determination or state how the determination is erroneous. (R&TC, § 18622(a).) A deficiency assessment based on an IRS audit report is presumed to be correct, and the taxpayer bears the burden of proving that the determination is erroneous. (*Appeal of Gorin*, 2020-OTA-018P.) As relevant here, when a joint return is filed by a husband and wife, each spouse is jointly and severally liable for the tax on the aggregate income that is due for that taxable year. (R&TC, § 19006(b); Internal Revenue Code (IRC), § 6013(d)(3).)

Appellants filed their 2016 California personal income tax return as married filing jointly. During protest, appellant M. Tanouye contended that for 2016, her taxable income was \$43,387 based on her W-2, and that S. Tanouye had no income. During this appeal, both appellants argue that they are now divorced and that appellant S. Tanouye failed to report or omitted income from their 2016 joint return when he filed their return and did not include his salary. It is unclear what appellants are arguing, but it appears that appellants contend that the liability should have been assessed against only S. Tanouye.

However, appellants have not presented any argument or evidence that shows error in the IRS adjustments or refutes FTB's determination based on those adjustments. Furthermore, as the IRS examination indicated, both spouses omitted income from their 2016 tax return. More importantly, when a joint return is filed by a husband and wife, each spouse is jointly and severally liable for the tax on the aggregate income that is due for that taxable year (R&TC § 19006(b); IRC, § 6013(d)(3)), and there is no evidence that appellants applied for innocent spouse relief with FTB. Based on the foregoing, appellants have failed to meet their burden of proof.

HOLDING

Appellants have not established error in the proposed assessment for the 2016 taxable year.

DISPOSITION

FTB’s action is sustained.

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*Tommy Leung*  
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Tommy Leung  
Administrative Law Judge

We concur:

DocuSigned by:  
*Andrea L.H. Long*  
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Andrea L.H. Long  
Administrative Law Judge

DocuSigned by:  
*Ovsep Akopchikyan*  
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Ovsep Akopchikyan  
Administrative Law Judge

Date Issued: 6/12/2023