

- the amount of \$147,425 and to appellant-wife in the amount of \$27,680. Appellants did not report the federal adjustments to FTB.
3. FTB then issued a Notice of Proposed Assessment (NPA), which proposed the same adjustments as those found in appellants' 2017 CP2000 Data Sheet detailing the federal adjustments. According to the CP2000 Data Sheet and the federal account transcript for the 2017 tax year, the IRS adjustments constituted a final federal determination.
 4. By letter dated April 16, 2021, appellants protested the NPA on grounds that the non-employee compensation was overstated by Gilbert and Associates and that the total non-employee compensation received by appellants should be \$54,920. In support, appellants produced purported copies of corrected 2017 Form 1099s issued by Gilbert and Associates.² As relevant to this appeal, the purported copies of the corrected Form 1099s are not marked as corrected, but indicate that Gilbert and Associates issued non-employee compensation of \$20,640 to appellant-husband and \$27,680 to appellant-wife, totaling \$48,320 (not \$54,920).
 5. Appellant-husband's and appellant-wife's federal Wage and Income Transcripts show that, as of April 8, 2022, they received \$147,425 and \$27,680, respectively, from Gilbert and Associates for the 2017 tax year.
 6. FTB issued a Notice of Action, affirming the NPA in its entirety.
 7. This timely appeal followed.
 8. On appeal, FTB provided Gilbert and Associates' federal and California corporate tax returns for the 2017 tax year.

DISCUSSION

R&TC section 18622(a) requires taxpayers to report federal changes to the 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 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 with respect to an

² The purported copies of the corrected Form 1099s issued from Gilbert and Associates totaled \$195,925 of non-employee compensation to various individuals for the 2017 tax year.

assessment based on a federal action. (*Appeal of Gorin, supra.*) In the absence of credible, competent, and relevant evidence showing that FTB's determination is incorrect, such determination must be upheld. (*Appeal of Bindley, 2019-OTA-179P.*) 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 assert that FTB's proposed assessment, which is based on information from the IRS's final federal determination, was erroneous. Appellants contend that their non-employee compensation was erroneously issued. Appellants support this contention by producing purported copies of the corrected 2017 Form 1099s issued from Gilbert and Associates to appellant-wife in the amount of \$27,690 and appellant-husband in the amount of \$20,640, totaling \$48,330.

However, evidence in the record does not support appellants' contentions. The purported corrected Form 1099s are not marked as corrected and do not match the income as outlined in appellants' federal wage and income transcripts. Additionally, there is no evidence that Gilbert and Associates amended its corporate tax returns to reflect that Form 1099s were corrected or that the IRS accepted the new Form 1099s as corrected. Therefore, appellants have not met their burden of proving that FTB's adjustments were incorrect or that the IRS has changed its audit assessment.

HOLDING

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

DISPOSITION

FTB’s action is sustained.

DocuSigned by:
Eddy Y.H. Lam
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Eddy Y.H. Lam
Administrative Law Judge

We concur:

DocuSigned by:
Keith T. Long
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Keith T. Long
Administrative Law Judge

DocuSigned by:
Ovsep Akopchikyan
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Ovsep Akopchikyan
Administrative Law Judge

Date Issued: 6/5/2023