

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of:  
**G. RIVERA**

) OTA Case No. 221212111  
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**OPINION**

Representing the Parties:

For Appellant: G. Rivera

For Respondent: Alisa L. Pinarbasi, Tax Counsel

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, G. Rivera (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$545, and applicable interest, for the 2018 taxable year.

Appellant waived the right to an oral hearing; therefore, the Office of Tax Appeals (OTA) decides the matter based on the written record.

**ISSUE**

Has appellant established error in FTB’s proposed assessment, which is based on a final federal determination?

**FACTUAL FINDINGS**

1. Appellant filed a timely California 2018 tax return reporting zero total tax.<sup>1</sup>
2. Thereafter, the IRS disallowed appellant’s car and truck expenses of \$29,631 and other business expenses of \$9,669. After adjusting for the disallowed expenses and allowing an additional deduction of \$2,110 for one-half of appellant’s self-employment tax, the IRS increased appellant’s adjusted gross income by \$37,190. As of February 7, 2023, the IRS had not reduced or canceled its assessment.

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<sup>1</sup> Appellant and M. Rivera filed the joint return. M. Rivera is not a party to the appeal.

3. FTB followed the federal determination and issued a Notice of Proposed Assessment (NPA) disallowing car and truck expenses of \$29,631, disallowing other business expenses of \$9,669, and allowing appellant a deduction for one-half of appellant's self-employment tax in the amount of \$2,110. Based on the adjustments, FTB proposed additional tax of \$545, plus applicable interest.
4. Appellant protested the additional tax with FTB. FTB denied appellant's protest and issued a Notice of Action affirming its NPA.
5. This timely appeal followed.

### DISCUSSION

A taxpayer must either concede the accuracy of a final federal determination or state where the determination is 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 FTB's determination is erroneous. (*Appeal of Black*, 2023-OTA-023P.) Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(c).) A preponderance of the evidence means the taxpayer must establish by documentation or other evidence that the circumstances it asserts are more likely than not to be correct. (*Appeal of Black*, *supra*.)

Rather, appellant contends that the IRS improperly disallowed his car expenses because the IRS believed the expenses were too high, even though appellant was an Uber driver at the time. Appellant states that he made an offer in compromise to the IRS and was awaiting its response.<sup>2</sup> Appellant asserts that he is having financial difficulties and would like OTA to help to "eliminate or substantially reduce" the tax he owes.

Appellant did not produce any evidence to show that FTB's adjustments were in error. Appellant did not provide a mileage log or other documentation to support claimed mileage. Furthermore, appellant did not provide evidence to substantiate the other disallowed business expenses. Appellant seeks a reduction or elimination of the tax primarily based on financial hardship. However, OTA is an independent agency with no affiliation with FTB. OTA's primary role is to determine the correct amount of tax. (*Appeal of Sheward*, 2022-OTA-228P.) OTA lacks authority to make discretionary adjustments to the amount of a tax assessment based

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<sup>2</sup> The appeal record shows that the IRS denied appellant's offer in compromise on December 29, 2022.


on a taxpayer’s ability to pay. (*Appeal of Robinson*, 2018-OTA-059P.)<sup>3</sup> As such, appellant has not established that he is entitled to a reduction or elimination of the proposed tax liability for 2018.

HOLDING


Appellant did not establish error in FTB’s proposed assessment, which is based on a final federal determination.


DISPOSITION

FTB’s action is sustained.

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Teresa A. Stanley  
Administrative Law Judge

We concur:

DocuSigned by:  
  
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Michael F. Geary  
Administrative Law Judge

DocuSigned by:  
  
47F45ABE89E34D0  
Suzanne B. Brown  
Administrative Law Judge

Date Issued: 7/17/2023

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<sup>3</sup> When this appeal is final, appellant may contact FTB directly about payment programs available to taxpayers experiencing financial hardship. (See <https://www.ftb.ca.gov/pay/if-you-cant-pay/>.)