

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

In the Matter of the Appeal of: )  
R. ROMERO AND )  
A. ROMERO )  
\_\_\_\_\_ )  
OTA Case No. 230112238

**OPINION**

Representing the Parties:

For Appellants: R. Romero  
A. Romero  
For Respondent: Caitlin S. Russo, Tax Technician

L. KATAGIHARA, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, R. Romero and A. Romero (appellants) appeal an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$555, and applicable interest, for the 2018 tax year.

Appellants 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, § 30209.05 et seq.) Appellants waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

**ISSUE**

Whether appellants have established error in FTB’s proposed assessment of additional tax, which is based upon a final federal determination.

**FACTUAL FINDINGS**

1. Appellants filed a joint 2018 California income tax return, reporting their 2018 federal adjusted gross income (AGI) and then subtracting \$18,288 from that amount nontaxable social security benefits received to derive their California AGI.

2. On their joint 2018 federal income tax return, appellants included 50 percent (\$9,144) of the \$18,288 they received in social security benefits in calculating their federal AGI (the same amount appellants reported on their 2018 California tax return).
3. The IRS subsequently determined that pursuant to Internal Revenue Code (IRC) section 86, appellants should have included 85 percent (\$15,544),<sup>1</sup> not 50 percent, of their social security benefits in their federal AGI. As such, the IRS increased appellants' federal AGI by \$6,400 (\$15,544 – \$9,144).
4. Based on this information, FTB made conforming adjustments to appellants' California return and issued a Notice of Proposed Assessment (NPA) to appellants proposing additional tax of \$555, plus interest.
5. Appellants protested the NPA.
6. In response, FTB explained its adjustments to appellants and requested additional information from appellants, but appellants did not respond.
7. Consequently, FTB issued a Notice of Action affirming the NPA. This timely appeal followed.

### DISCUSSION

R&TC section 18622(a) requires a taxpayer to concede the accuracy of federal changes to a taxpayer's 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 a taxpayer bears the burden of proving that FTB's determination is erroneous. (*Appeal of Valenti*, 2021-OTA-093P.) In the absence of credible, competent, and relevant evidence showing that FTB's determination is incorrect, it must be upheld. (*Ibid.*)

Pursuant to R&TC section 17072(a), California conforms to IRC section 62, defining federal AGI, except as otherwise provided. Thus, subject to California-specific addition and subtraction modifications, such as the exclusion from California gross income of certain social security benefits under R&TC section 17087(a), taxpayers generally must report the same federal AGI on both their federal and California returns.

Here, appellants reported the same federal AGI on both their 2018 federal and California returns. In calculating their federal AGI, appellants included only 50 percent (\$9,144) of their

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<sup>1</sup> 85 percent of \$18,288.00 is \$15,544.80, but it appears the IRS rounded to \$15,544.00 (rather than \$15,545.00).

\$18,288 in social security benefits. The IRS, however, determined that 85 percent (\$15,544), not 50 percent, of appellants' social security benefits were taxable and should have been included in appellants' federal AGI. (IRC, § 86). As a result, the IRS increased appellants' federal AGI for the 2018 tax year by \$6,400 (\$15,544 – \$9,144).

FTB followed the IRS's adjustments by increasing appellants' reported California AGI by \$6,400. FTB also reduced appellants' reported \$18,288 deduction for social security benefits to \$15,544 because, in calculating their California AGI (which requires using the federal AGI as a starting point), appellants are only entitled to reduce their federal AGI by the amount of social security benefits included therein. FTB's reduction of appellants' California adjustment for social security benefits from \$18,288 to \$15,544, resulted in an additional \$2,744 (\$18,288 – \$15,544) increase to appellants' California AGI. In total, these changes increased appellants' California AGI by \$9,144 (\$6,400 + \$2,744).<sup>2</sup> It is evident that FTB's adjustments and the resulting assessment were based on the IRS's adjustments. Therefore, FTB's determination is presumed to be correct, and appellants bear the burden of proving FTB's determination is erroneous. (*Appeal of Valenti, supra.*)

Appellants assert that FTB's proposed assessment is based upon an erroneous double-reporting of appellant R. Romero's wages. In support of this contention, appellants provide documentation indicating that R. Romero's employer inadvertently reported her wages twice (resulting in an overreporting of \$37,982.92). Appellants also submit correspondence from the IRS indicating that appellants do not have an outstanding balance with the IRS for the 2018 tax year.

However, appellants' contention and supporting documentation are irrelevant as FTB's adjustments were not predicated on the overreported wages, and instead, were based upon appellants' miscalculated taxable social security benefits, as discussed above. Neither the IRS nor FTB adjusted appellants' federal or California AGI, respectively, by the overreported \$37,982.92.

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<sup>2</sup> The same outcome is reached when reviewing appellants' California return as filed, without considering any federal adjustments: appellants included only 50 percent (\$9,144) of the \$18,288 they received in social security benefits in their federal AGI, but to calculate their California AGI, appellants subtracted the entire \$18,288 from their federal AGI. As appellants are only entitled to subtract the amount of social security benefits included in their federal AGI, appellants claimed an additional \$9,144 deduction to which they are not entitled.

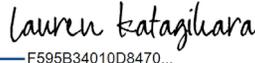
Appellants have not provided credible, competent, and relevant evidence showing that FTB’s determination is incorrect, and therefore, FTB’s proposed assessment of additional tax must be upheld.

HOLDING

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

DISPOSITION

FTB’s action is sustained.

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Lauren Katagihara  
Administrative Law Judge

Date Issued: 7/26/2023