

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 21119151  
S. LALLISS AND )  
J. LALLISS )  
\_\_\_\_\_ )

**OPINION**

Representing the Parties:

For Appellants: S. Lalliss  
For Respondent: Joel Smith, Tax Counsel III

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, S. Lalliss and J. Lalliss (appellants) appeal an action by the Franchise Tax Board (respondent), proposing additional tax of \$9,422.00, an accuracy related penalty (ARP) of \$1,884.40,<sup>1</sup> and applicable interest, for the 2016 taxable year.

Appellants waived their right to an oral hearing; therefore, this matter is being decided based on the written record.

**ISSUE**

Whether appellants have shown that respondent’s action, which is based on an IRS audit, is incorrect.

**FACTUAL FINDINGS**

1. Appellants’ 2016 federal income tax return (Form 1040) was examined by the IRS, which resulted in several adjustments.
2. Respondent received information reporting the IRS’s adjustments to appellants’ 2016 Form 1040, and issued a Notice of Proposed Assessment (NPA) making comparable

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<sup>1</sup> Appellants have not mentioned the ARP and have not argued that it should be waived; therefore, the ARP will not be discussed further.

adjustments to appellants' 2016 California Nonresident Income Tax Return (Form 540NR).

3. Appellants protested, and were successful in showing that not all of the IRS's adjustments resulted from California-source income. Consequently, respondent reduced the amounts imposed by the NPA,<sup>2</sup> but sustained the balance of the IRS's adjustments.

#### DISCUSSION

When the IRS makes changes to a taxpayer's federal tax return, the taxpayer must report those changes to respondent, and concede the accuracy of the federal changes or state why the changes are erroneous. (R&TC, § 18622(a).) A deficiency assessment based on a federal audit report is presumptively correct and a taxpayer bears the burden of proving that the determination is erroneous. (*Appeal of Gorin*, 2020-OTA-018P.) Unsupported assertions by taxpayers are insufficient to satisfy their burden of proof with respect to a proposed assessment based on a federal action. (*Ibid.*)

Here, respondent issued its NPA based on a final federal determination, and thus, respondent's proposed assessment is presumptively correct. (*Appeal of Gorin, supra.*) After the NPA was modified, the evidence does not suggest that respondent erred in its adjustments to appellants' income for the 2016 taxable year. Appellants argue that the IRS was still considering their case, and that one of the income items was from a nontaxable retirement plan rollover. However, there is no evidence in the record to substantiate<sup>3</sup> either of these contentions.

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<sup>2</sup> Nevertheless, California law requires nonresidents like appellants to use their entire taxable income to compute their California tax rate, which is what respondent did here as part of its adjustments. (See R&TC, § 17041(b); *Appeal of Williams*, 2023-OTA-041P.)


<sup>3</sup> The record contains an appointment notice from the IRS, but no further details regarding the purpose and outcome of that appointment.

HOLDING

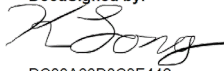
Appellants did not show that respondent’s action was incorrect.


DISPOSITION

Respondent’s action is sustained.

DocuSigned by:  
  
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Tommy Leung  
Administrative Law Judge

We concur:

DocuSigned by:  
  
DC88A60D8C3E442  
Keith T. Long  
Administrative Law Judge

DocuSigned by:  
  
873D9797B9E64E1  
John O. Johnson  
Administrative Law Judge

Date Issued: 9/7/2023