

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
E. BIGBY AND)
J. CURNUTT)
_____)
OTA Case No. 220811176

OPINION

Representing the Parties:

For Appellants: E. Bigby
J. Curnutt

For Respondent: Phillip C. Kleam, Attorney

For Office of Tax Appeals: Oliver Pfof, Attorney

K. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, E. Bigby and J. Curnutt (appellants) appeal an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$1,389, and applicable interest for the 2017 tax year.

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

ISSUE

Whether appellants have established error in FTB’s proposed assessment, which is based on federal adjustments.

FACTUAL FINDINGS

1. Appellants timely filed a joint 2017 California resident income tax return, reporting a tax of \$8,439. After applying withholding credits of \$11,133, appellants claimed a refund of \$2,694. FTB accepted the return as filed and issued the refund on March 12, 2018.
2. FTB received information from the IRS showing that the IRS had increased appellants’ federal income for the 2017 tax year. Based on the information provided by the IRS,

- FTB issued appellants a Notice of Proposed Assessment (NPA), which increased appellants' California taxable income by disallowing certain claimed deductions and self-employment business expenses.
3. On March 24, 2022, the United States Tax Court issued a decision stating that appellants and the IRS agreed to a federal tax deficiency of \$3,735 for the 2017 tax year. According to a federal Form 5278, Statement – Income Tax Changes, the IRS increased appellants' taxable income by \$14,939.82 by disallowing the following claimed self-employed business expenses and itemized deductions: meals and entertainment expenses of \$4,092.90; travel expenses of \$1,980; car and truck expenses of \$8,573.92; and itemized deductions of \$293.
 4. On June 1, 2022, appellants timely protested the NPA. Appellants provided a copy of the United States Tax Court Decision with their protest.
 5. On July 29, 2022, FTB issued a Notice of Action (NOA) revising the NPA. The NOA proposes to increase appellants' taxable income by \$14,939, in correspondence with the federal adjustments, and assess an additional tax of \$1,389, plus applicable interest.
 6. This timely appeal followed.

DISCUSSION

If the IRS changes or corrects an item reported by a taxpayer on their federal income tax return, the taxpayer shall report the change or correction to FTB within six months of the final federal determination, either conceding the accuracy of that determination, or stating where the determination is erroneous. (R&TC, § 18622(a).) It is well that settled a deficiency assessment based on federal adjustments is presumed correct, and a taxpayer has 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.*)

On appeal, appellants argue that the NOA is incorrect because the revised California taxable income reflected on the NOA, \$168,778, is more than the revised federal taxable income reflected on federal Form 5278, \$149,734. Appellants contend that the revised California amount should be the same as the revised federal amount. However, OTA has reviewed appellants' return, which shows that appellants' self-reported California taxable income is \$19,045 greater than their self-reported federal taxable income. As such, appellants' revised


California taxable income should also be greater than their revised federal taxable income after the disallowance of the expenses in this case. A taxpayer’s California taxable income may vary for any given tax year due to differences in federal tax law and California tax law. FTB’s corresponding revisions merely use appellants’ self-reported California taxable income as the base on which to add the federal adjustments of \$14,939. Appellants have not provided evidence showing their California self-reported taxable income is incorrect or that their revised California taxable income should be the same as their federal taxable income. Appellants also have not provided any evidence that the federal determination is incorrect or has been further adjusted. Accordingly, appellants have not established any error in FTB’s proposed assessment.

HOLDING

Appellants have not established any error in FTB’s proposed assessment, which is based on a federal adjustment.

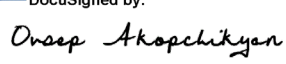
DISPOSITION

FTB’s action is sustained.


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Keith T. Long
Administrative Law Judge

We concur:

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Ovsep Akopchikyan
Administrative Law Judge

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Teresa A. Stanley
Administrative Law Judge

Date Issued: 10/12/2023