

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
D. THOMPSON

) OTA Case No. 230112373
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OPINION

Representing the Parties:

For Appellant: D. Thompson

For Respondent: Topher Tuttle, Attorney

For Office of Tax Appeals: Amber Poon, Graduate Legal Assistant

L. KATAGIHARA, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, D. Thompson (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$1,703 and applicable interest for the 2017 tax year.

Appellant 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.) Appellant waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

ISSUE

Whether appellant has established error in FTB’s proposed assessment of additional tax, which is based on a final federal determination.

FACTUAL FINDINGS

1. Appellant timely filed a 2017 California income tax return, reporting California miscellaneous itemized deductions and claiming an overpayment, for which FTB issued a refund.
2. The IRS subsequently adjusted appellant’s 2017 federal taxable income to account for \$24,718 of disallowed miscellaneous itemized deductions.

3. Based on this information, FTB made corresponding adjustments to appellant's California taxable income (similarly disallowing miscellaneous itemized deductions, but allowing the standard deduction) and issued a Notice of Proposed Assessment (NPA) proposing an additional tax of \$1,703, plus applicable interest.
4. Appellant protested the NPA on the basis that the NPA was untimely.¹
5. Thereafter, FTB issued a Notice of Action, affirming the NPA.
6. This timely appeal followed.

DISCUSSION

When the IRS makes a final federal determination, a taxpayer must concede the accuracy of the federal changes to a taxpayer's income or state where the changes are erroneous. (R&TC, § 18622(a).) It is well settled that a deficiency assessment based on a federal adjustment is presumptively correct and that the 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.*)

Here, the IRS disallowed appellant's claimed miscellaneous itemized deduction, which resulted in an increase to appellant's 2017 federal taxable income. As such, FTB made corresponding changes and issued a proposed assessment to appellant. Because FTB's proposed assessment was based on federal adjustments, it is presumed correct, and appellant has the burden to show that FTB's proposed assessment is erroneous.

On appeal, appellant only argues that FTB's proposed assessment has been discharged in bankruptcy. The Office of Tax Appeals does not have jurisdiction to consider whether a liability, such as FTB's proposed assessment, has or should have been discharged in bankruptcy. (Cal. Code Regs., tit. 18, § 30104(k).) Furthermore, appellant has not asserted that FTB's proposed assessment was erroneous. Accordingly, appellant has not demonstrated error in FTB's proposed assessment, which is based on a final federal determination.

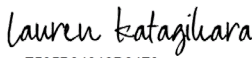
¹ Appellant did not raise this argument on appeal, so this issue will not be discussed.

HOLDING

Appellant has not established error in FTB’s proposed assessment of additional tax, which is based on a final federal determination.

DISPOSITION

FTB’s action is sustained.

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Lauren Katagihara
Administrative Law Judge

Date Issued: 10/27/2023