

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

In the Matter of the Appeal of: ) OTA Case No. 220911320  
**R. BINDI** )  
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**OPINION**

Representing the Parties:

For Appellant: R. Bindi  
For Respondent: Andrea Watkins, Tax Counsel

E. LAM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, R. Bindi (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$897, and applicable interest, for the 2018 tax year.

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

**ISSUE**

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

**FACTUAL FINDINGS**

1. Appellant timely filed a California Resident Income Tax Return for the 2018 tax year.
2. The IRS reviewed appellant’s 2018 federal income tax return and adjusted appellant’s income, which resulted in a federal tax deficiency. Specifically, the IRS increased appellant’s federal adjusted gross income (AGI) by the unreported pension or annuity income of \$9,651. The unreported pension or annuity income was reported as a taxable distribution to appellant on Form 1099-R by First Trust Retirement. The IRS’ adjustment constituted a final federal determination. Appellant did not report the federal adjustments to FTB.

3. Based on information received from the IRS, FTB issued a Notice of Proposed Assessment (NPA), which proposed the same adjustments as those found by the final federal determination. As a result, the NPA proposed an additional tax of \$897, and applicable interest.
4. Appellant protested the NPA. By letter dated July 28, 2022, FTB sent a General Correspondence detailing the 2018 adjustments.
5. FTB issued a Notice of Action, affirming the NPA in its entirety.
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 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.) The applicable burden of proof is by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(c).) In the absence of credible, competent, and relevant evidence showing that FTB's determination is incorrect, it must be upheld. (*Appeal of Valenti*, *supra*.)

Here, FTB received information from the IRS that it increased appellant's federal AGI for the 2018 tax year and that the adjustments constituted a final federal determination.<sup>1</sup> Appellant has not shown that the unreported pension or annuity income of \$9,561 is not subject to tax. Also, appellant has not presented evidence that the proposed assessment was incorrectly calculated. On appeal, appellant requests more detailed information regarding the unreported pension or annuity income. However, appellant is in the best position to know what income he received, and FTB explained its assessment both during the protest process and on appeal.<sup>2</sup> (See *Psaty v. United States*, (3d Cir. 1971) 442 F.2d 1154, 1160 [finding that the taxpayer has the

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<sup>1</sup> For personal income tax purposes, California generally conforms to Internal Revenue Code section 62, defining federal AGI, except as otherwise provided. (R&TC, § 17072(a).) A taxpayer must generally report the same federal AGI from the federal return on his or her California return, subject to California-specific adjustments.

<sup>2</sup> To reiterate, appellant's 2018 federal tax return was audited by the IRS. During audit, the IRS found that First Trust Retirement reported on Form 1099-R that a taxable distribution in the amount of \$9,651 was distributed to appellant. This income in the amount of \$9,651 was not reported on appellant's federal and California tax return, which resulted in additional tax owed. Appellant agreed and remitted the additional tax owed to the IRS, but not to FTB.

correct facts and figures readily available].) Appellant also contends that he is a caretaker for his elderly mother and that he is a senior citizen. Here, OTA is cognizant of appellant’s personal hardship; however, appellant has not provided evidence that the federal determination is incorrect, cancelled, or revised. Accordingly, appellant has not demonstrated error in FTB’s adjustments, which are based on a final federal determination.

HOLDING

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

DISPOSITION

FTB’s action is sustained.

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Eddy Y.H. Lam  
Administrative Law Judge

We concur:

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*Michael F. Geary*  
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Michael F. Geary  
Administrative Law Judge

DocuSigned by:  
*Veronica I. Long*  
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Veronica I. Long  
Administrative Law Judge

Date Issued: 5/26/2023