

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
K. KELLEY) OTA Case No. 230112270
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OPINION

Representing the Parties:

For Appellant: K. Kelley
For Respondent: Christopher T. Tuttle, Attorney

E. LAM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, K. Kelley (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$2,153, 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, § 30209.1.) Office of Tax Appeals (OTA) Administrative Law Judge Eddy Y.H. Lam held an electronic oral hearing for this matter on July 20, 2023. At the conclusion of the hearing, the record was closed and this matter was submitted for an opinion.

ISSUE

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

FACTUAL FINDINGS

1. Appellant timely filed a California Resident Income Tax Return (California tax return) for the 2017 tax year, and reported California taxable income of \$26,521.
2. The IRS audited appellant’s 2017 federal income tax return and adjusted appellant’s income, which resulted in a federal tax deficiency. FTB received information from the IRS in the form of FEDSTAR IRS Data Sheet, showing that the IRS increased

- appellant's taxable income by \$31,362. Specifically, the IRS increased appellant's federal taxable income by the following federal adjustments: \$10,536 of unreported ordinary dividends, \$16,516 of disallowed business expenses, \$2,029 of disallowed medical deductions, and \$2,281 of disallowed miscellaneous deductions.
3. FTB made the same corresponding adjustments to appellant's California taxable income and issued a Notice of Proposed Assessment (NPA). The NPA reflects FTB's determination that appellant's total California taxable income is \$57,883 (\$26,521 reported California taxable income + \$31,362 federal audit adjustment amount), and proposed an additional tax of \$2,153, plus applicable interest.
 4. Appellant timely filed a protest of the NPA. Appellant disputed that his reported California taxable income should be \$16,521, not \$26,521, and recalculated the total additional tax to be \$1,153, plus applicable interest.
 5. FTB issued a Notice of Action affirming the NPA.
 6. Appellant then timely filed this appeal.

DISCUSSION

R&TC section 18622(a) requires a taxpayer to report federal changes to a return and either concede the accuracy of the federal changes to the 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.) The applicable burden of proof is by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(c).) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof with respect to an assessment based on a federal action. (*Appeal of Gorin*, 2020-OTA-018P.) In the absence of credible, competent, and relevant evidence showing error in the FTB's determination, the determination must be upheld. (*Appeal of Bindley*, 2019-OTA-179P.) A taxpayer's failure to produce evidence that is within the taxpayer's control gives rise to a presumption that such evidence is unfavorable to the taxpayer's case. (*Ibid.*)

As mentioned above, the IRS audited appellant's 2017 federal income tax return and adjusted appellant's income. Specifically, the IRS increased appellant's taxable income by \$31,362, which consisted of the following: \$10,536 of ordinary dividends, \$16,516 of disallowed business expenses, \$2,029 of disallowed medical deductions, and \$2,281 of

disallowed miscellaneous deductions. As a result of the IRS adjustments, FTB mirrored the same adjustment and proposed an additional tax of \$2,153, plus applicable interest.

Here, appellant argues that his California taxable income should be \$16,521 or exactly \$10,000 less than the previously reported amount of \$26,521 on appellant's California tax return. Therefore, appellant recalculated his additional tax to be \$1,153, plus applicable interest, and not FTB's proposed assessment of additional tax in the amount of \$2,153, plus applicable interest. However, unsupported assertions are insufficient to satisfy a taxpayer's burden of proof with respect to a determination based on federal action. (*Appeal of Gorin, supra.*) In particular, appellant provides no explanation or evidence that his taxable income should be reduced by \$10,000 or that FTB's proposed assessment is wrong. Appellant has not provided any evidence of error in FTB's proposed assessment, which is based on a federal determination.

During oral hearing, appellant expressed that he would want "to come to a happy medium" in determining the additional tax owed with FTB. It appears that appellant wants to reach a settlement for the additional tax owed with FTB. However, OTA's function is to determine the correct amount of a taxpayer's California income tax liability. (*Appeal of Robinson, 2018-OTA-059P.*) OTA has no jurisdiction over FTB's settlement, installment agreement, or offer in compromise programs.¹ (*Ibid.*)

¹ After the decision in this appeal becomes final, appellant may wish to contact FTB to determine eligibility for its offer in compromise program or whether an installment payment agreement is appropriate. (See, for example, <https://www.ftb.ca.gov/pay/if-you-cant-pay/offer-in-compromise.html>, for information on FTB's offer in compromise program, and <https://www.ftb.ca.gov/pay/payment-plans/index.asp>, for information on FTB's installment payment program.)

HOLDING

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

DISPOSITION

FTB's action is sustained.

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Eddy Y.H. Lam
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Eddy Y.H. Lam
Administrative Law Judge

Date Issued: 9/7/2023