

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 230212654
M. POWELL AND)
B. POWELL)
_____)

OPINION

Representing the Parties:

For Appellants: M. Powell

For Respondent: Caitlin S. Russo, Tax Technician

R. TAY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, M. Powell and B. Powell (appellants) appeal an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$2,220, and applicable interest for the 2017 tax year.

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

ISSUE

Whether appellants have shown FTB erred in its proposed assessment of tax for the 2017 tax year, which is based on federal adjustments.

FACTUAL FINDINGS

1. In 2017, appellant M. Powell received an early distribution from a pension account and used the distributed funds to pay off student loans.
2. Appellants filed a timely California income tax return for the 2017 tax year, but did not report the pension distribution as income. FTB processed the return as filed and issued a refund.

3. FTB received information that the IRS assessed additional tax for unreported income, which included income attributable to the pension distribution, and made corresponding adjustments on appellants' California income tax return.¹
4. FTB issued a Notice of Proposed Assessment and appellants protested.
5. FTB denied the protest and issued a Notice of Action dated February 2, 2023.

DISCUSSION

R&TC section 18622(a) requires a taxpayer to concede the accuracy of a federal changes to a taxpayer's income or state where the changes are erroneous. It is well settled that a deficiency assessment based on a federal audit report is presumed to be correct and the taxpayer bears the burden of proving that the determination is erroneous. (*Appeal of Gorin*, 2020-OTA-018P.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Ibid.*)

Unless an exemption applies, pensions are includible in the gross income of all California residents who receive them. (R&TC, § 17071.) R&TC section 17085 in relevant part conforms to Internal Revenue Code (IRC) section 72, pursuant to which early distributions from qualified retirement plans are taxable, and a 10 percent additional tax applies to such distributions (the early distribution tax). (IRC, § 72(a)(1), 72(t).) For California purposes, R&TC section 17085(c)(1) reduces the additional tax rate on early distributions to 2.5 percent, instead of 10 percent, on early distributions.

Here, it is uncontroverted that appellants received an early pension distribution from M. Powell's retirement account in 2017, and that the IRS imposed an additional tax on that distribution. Although appellants dispute FTB's proposed action, which is based on the IRS's adjustments, appellants have not shown error in FTB's corresponding adjustments. In their opening brief, appellants contend the IRS found appellants "exempt from paying more tax" on the early distribution and requested that FTB confirm as such with the IRS. FTB provided a copy of appellant's federal account transcript for the 2017 tax year, which shows no evidence the

¹ The IRS also made adjustments to other income items and deductions on appellants' federal income tax return, and FTB made corresponding adjustments to appellants' California income tax return. Appellants do not dispute those adjustments, which are hereby sustained without further discussion.

IRS applied any exemption to the early distribution tax at the federal level. In fact, the federal account transcript shows the IRS assessed additional tax that was not revised or withdrawn.

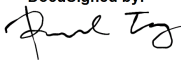
Additionally, appellants argue the pension distribution should be excluded from income and should not be subject to the early distribution tax because appellant M. Powell used the distribution proceeds to make student loan payments. However, there is no such exception under the law for using early pension distribution proceeds to make student loan payments. Appellants do not argue any other exception applies, and OTA finds no other grounds in the record to exclude the distributed funds from income and the early distribution tax. Consequently, appellants have not met their burden to show error in FTB’s proposed assessment.

HOLDING


Appellants have not shown FTB erred in its proposed assessment of tax for the 2017 tax year, which is based on federal adjustments.

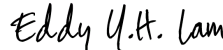
DISPOSITION

FTB’s action is sustained in full.

DocuSigned by:

F8E81582726F448...
Richard Tay
Administrative Law Judge

We concur:

DocuSigned by:

A11783ADD49442B...
Huy “Mike” Le
Administrative Law Judge

DocuSigned by:

EAB88DA3324477...
Eddy Y.H. Lam
Administrative Law Judge

Date Issued: 12/1/2023