

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
B. MAKAIU) OTA Case No. 221212189
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OPINION

Representing the Parties:

For Appellant: B. Makaiiu
For Respondent: Dawn Casey, Specialist

R. TAY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, B. Makaiiu (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$2,799.00,¹ and applicable interest for the 2018 tax year.

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

ISSUE

Whether appellant has shown FTB erred in disallowing appellant’s subtraction of income reported on Schedule CA for the 2018 tax year.

¹ In his Request for Appeal Before the Office of Tax Appeals (Request), Appellant indicates the amount on appeal is \$3,229.05, which was the amount of tax and interest on the Notice of Action. Interest has continued to accrue; however, the tax remains the same.

FACTUAL FINDINGS

1. Appellant filed a timely 2018 California income tax return. On the return, appellant reported a California adjustment of \$53,324² on line 14, and subtracted the adjustment from his federal adjusted gross income. Appellant also reported a net overpayment of \$1,482, and requested a refund.
2. FTB processed appellant's return and issued a refund.
3. Subsequently, FTB reviewed appellant's return and disallowed appellant's California adjustment. FTB issued a Notice of Proposed Assessment, and appellant protested.
4. FTB sent appellant a position letter explaining that the subtraction was improper because appellant is a California resident, and is taxed on all sources of income. Appellant did not respond to the position letter.
5. On November 28, 2022, FTB issued a Notice of Action affirming the proposed assessment.
6. This timely appeal follows.

DISCUSSION

R&TC section 17041 imposes a tax “upon the entire taxable income of every resident of this state.” FTB’s determination of tax is presumed to be correct, and a taxpayer has the burden of proving error. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509; *Appeal of Wright Capital Holdings, LLC*, 2019-OTA-219P.) Unsupported assertions are not sufficient to satisfy a taxpayer’s burden of proof. (*Appeal of Wright Capital Holdings, LLC, supra.*) FTB’s determination cannot be successfully rebutted when the taxpayer fails to provide credible, competent, and relevant evidence as to the issues in dispute. (*Appeal of Chen and Chi*, 2020-OTA-021P.)

Here, FTB conducted a review of appellant’s 2018 California income tax return, and disallowed appellant’s claimed California adjustment. Appellant has not provided any explanation for his adjustment that reduced his income for California income tax purposes.

² According to appellant’s California tax return in the record, appellant actually entered \$63,324 on line 14. However, this appears to have been a typo, since the rest of the return treats the subtraction as having been \$53,324, and FTB treated it as a subtraction of \$53,324. Appellant has not disputed FTB’s interpretation of the subtraction amount during the administrative protest at FTB and here on appeal, and thus, OTA also follows FTB’s interpretation.

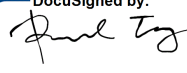
Additionally, appellant has not provided evidence to show he is entitled to the income adjustment. FTB has provided ample opportunity for appellant to provide any such information at protest and during this appeal, but appellant has not done so.³ OTA also finds no evidence in the record of error in FTB’s proposed assessment.

HOLDING


Appellant has not shown FTB erred in disallowing appellant’s subtraction of income reported on Schedule CA for the 2018 tax year.


DISPOSITION

FTB’s action is sustained.

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Richard Tay
Administrative Law Judge

We concur:

DocuSigned by:

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Veronica I. Long
Administrative Law Judge

DocuSigned by:

48745BB808914B4...
Josh Aldrich
Administrative Law Judge

Date Issued: 12/12/2023

³ In his Request, appellant requested the “settlement program option.” FTB provided information regarding the procedure for appellant to request admission into FTB’s settlement program. However, OTA has no indication that appellant responded, and OTA has no authority to force the parties into a settlement. (See Cal. Code Regs., tit. 18, §§ 30103, 30104, 30221.)