

For D. Day's estate planning business, the IRS disallowed travel expenses totaling \$8,485 and "other expenses" totaling \$10,003. For D. Day's aviation photography business, the IRS disallowed depreciation expenses totaling \$149, office expenses totaling \$842, travel expenses totaling \$235, car and truck expenses totaling \$762, commissions and fees expenses totaling \$5,220, and "other expenses" totaling \$1,423. The IRS also disallowed appellants' home mortgage interest deduction of \$4,278 and appellants' charitable contribution deduction of \$4,200.

3. Based on the information provided by the IRS, FTB made corresponding adjustments to appellants' California return and issued a Notice of Proposed Assessment proposing additional tax of \$1,605, plus interest.
4. Appellants protested the Notice of Proposed Assessment, and with their protest included a photocopy of an IRS Form 4549, dated April 25, 2017, and titled "Income Tax Examination Changes." The IRS Form 4549 showed the IRS made additional adjustments to its federal assessment. Specifically, the IRS allowed appellants a deduction in the amount of \$12,707 for travel expenses incurred by D. Day's estate planning business.
5. Based on the documentation appellants provided during the protest, FTB issued a Notice of Action reducing the additional tax from \$1,605 to \$920, plus interest, but otherwise affirmed its proposed assessment. The Notice of Action states that the federal audit report "shows the \$11,390.00 of federal income taxes originally assessed was reduced by \$4,760.00, resulting in a revised additional federal tax assessment of \$6,630.00, plus penalty and interest."
6. Appellants timely filed this appeal from FTB's Notice of Action, stating that they were waiting for the IRS to respond to correctly reflect its additional adjustments allowing appellants' claimed deduction.
7. Thereafter, FTB requested that this appeal to the Office of Tax Appeals (OTA) be deferred to allow appellants time to show that the IRS had accepted their case for reconsideration.¹

¹ This matter was deferred from April 28, 2020, until December 27, 2022, when OTA reinstated active proceedings and returned the matter to the active calendar.

8. On appeal to OTA, FTB submitted a copy of appellants' IRS account transcript for the 2015 tax year, dated December 6, 2022; it shows a \$11,390 liability entered on January 1, 2018, and a reduction of the \$11,390 liability by \$4,760 in an entry dated October 7, 2019. The federal account transcript does not show that the IRS further reduced the federal assessment through at least November 7, 2022, which is the last dated entry.

DISCUSSION

If the IRS changes or corrects an item reported by a taxpayer on their federal income tax return, the taxpayer must report the change or correction to FTB within six months from the date of the final federal determination and concede the accuracy of that determination, or state where the determination is erroneous. (R&TC, § 18622(a).) A federal determination is deemed final when the adjustment resulting from an IRS examination is assessed. (R&TC, § 18622(d); Internal Revenue Code, § 6203.) As relevant here, an IRS account transcript is a valid record of assessment. (See Treas. Reg. § 301.6203-1; Rev. Rul. 2007-21, 2007-14 I.R.B. 865.)

It is well-settled that a deficiency assessment based on federal adjustments 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.) In the absence of credible, competent, and relevant evidence showing that FTB's determination is incorrect, it must be upheld. (*Ibid.*)

Appellants state they are waiting for the IRS to respond to their appeal regarding the alleged mistake the IRS made in the federal assessment. Appellants contend the original federal assessment of \$11,390, plus penalties and interest, was corrected during the federal audit and subsequently revised to a \$4,760 credit. With their explanation, appellants provide photocopies of correspondence they received from the IRS, including an IRS Form 4549 dated April 25, 2017, showing the federal adjustments, i.e., the disallowed business and nonbusiness deductions, and the resulting deficiency measure of what appears to be \$11,390.² Appellants also provide a photocopy of an IRS Form 4549 dated in July 2019, showing the IRS reversed its determination to disallow the travel expenses from D. Day's estate planning business and allowed a \$12,707 deduction for those expenses, which resulted in an overpayment of \$4,760. In light of the IRS's decision to allow a business deduction for those travel expenses, FTB in its

² The photocopy is grainy and difficult to read.

protest determination already made a corresponding adjustment to that deduction by issuing a Notice of Action that reduced the additional tax from \$1,605 to \$920.

Appellants have not, however, provided direct evidence that the IRS reversed its determination as to the remaining disallowed business and nonbusiness deductions. Although the July 2019 IRS Form 4549 shows a \$4,760 overpayment, the existence of an overpayment does not prove the IRS permitted the remaining disallowed deductions. A review of the IRS account transcript shows a \$11,390 liability entered on January 1, 2018. The federal account transcript also shows the IRS later reduced the \$11,390 liability by \$4,760 in an entry dated October 7, 2019, which is more recent than the July 2019 Form 4549 appellants submitted. The federal account transcript, dated December 6, 2022, does not show that the IRS further reduced the federal assessment through at least November 7, 2022, which is the last dated entry. In sum, the evidence does not show that the IRS further reduced its assessment for the 2015 tax year.

HOLDING

Appellants have not shown error in FTB's proposed assessment, which is based on federal adjustments.

DISPOSITION

FTB's Notice of Action is sustained.

DocuSigned by:

Suzanne B. Brown

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Suzanne B. Brown
Administrative Law Judge

We concur:

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Andrea L.H. Long

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Andrea L.H. Long
Administrative Law Judge

DocuSigned by:

Sheriene Anne Ridenour

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Sheriene Anne Ridenour
Administrative Law Judge

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