

2. The IRS determined that appellant did not include the full amount of his taxable pension income in his federal adjusted gross income (AGI).¹ Accordingly, the IRS increased appellant's federal AGI by \$36,000 and assessed additional tax.² In August 2021, the IRS's determination became a final federal determination for the 2018 tax year.³ Appellant did not report the federal change to FTB. The IRS later reported the federal change to FTB.
3. On September 21, 2022, FTB issued appellant a Notice of Proposed Assessment (NPA) proposing to follow the IRS's adjustment for unreported pension income by increasing appellant's California AGI by \$36,000, and to assess additional tax of \$2,960 and applicable interest.⁴
4. Appellant protested the NPA. FTB issued appellant a position letter dated December 15, 2022. In the letter, FTB enclosed details of the IRS's adjustment and explained that information received from the IRS did not show that the federal assessment had been reduced or cancelled.
5. Appellant did not respond. On February 17, 2023, FTB issued appellant a Notice of Action affirming the NPA.
6. Appellant timely appealed.

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

¹ Appellant received taxable pension income of \$40,004 reportable on Form 1099-R. A copy of Form 1099-R filed with the return erroneously reports a taxable amount of \$4,004; however, the third-party payor reported a taxable amount of \$40,004 to the IRS and the California Employment Development Department. It is unclear whether the amount on Form 1099-R was an input error as the payor name also appears to be incorrect.

² The additional taxable pension income of \$36,000 represents the difference between the taxable pension income of \$40,004 reported by the third-party payor, and the taxable pension income of \$4,004 reported by appellant ($\$40,004 - \$4,004 = \$36,000$).

³ The IRS assessed an accuracy-related penalty, but FTB did not impose any penalty.

⁴ For personal income tax purposes, California generally conforms to Internal Revenue Code (IRC) 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 addition and subtraction modifications.

income is presumed to be correct and a taxpayer bears the burden of proving that FTB's determination is erroneous. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509, 514; *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. (*Appeal of Valenti, supra.*)

Appellant does not contest the adjustment. Appellant argues that he could have paid the amount due if he had received FTB's notice in a timely manner. OTA interprets appellant's argument to assert that FTB's notification was untimely. However, R&TC section 19057(a) generally provides that FTB shall mail a notice of proposed deficiency assessment to the taxpayer within four years after the return was filed. Here, appellant filed the return on October 11, 2019, and FTB issued appellant the NPA on September 21, 2022, within four years of when the return was filed. Thus, the NPA was timely.⁵

Appellant implies in his protest that his tax preparer is at fault for the mistake. OTA interprets appellant's argument as asserting reasonable cause; however, reasonable cause is generally applicable to penalty abatement. (See, e.g., *Appeal of Moren*, 2019-OTA-176P.) Here, appellant received, but did not report on his return, the full amount of taxable pension income, possibly because the Form 1099-R included with the return listed the erroneous amount of taxable pension income. FTB's proposed assessment includes the unreported taxable pension income in appellant's California taxable income. While appellant may have reasonably relied on the Form 1099-R or his tax preparer's services in preparing his tax return, he provides no authority, and OTA is not aware of any, that provides an exemption for taxable income based on a reasonable cause defense.

Appellant also raises the issue of financial hardship, stating that he has no surplus of money to pay his tax liability. Although FTB in certain instances may consider appellant's inability to pay,⁶ as applicable here, no statute or provision authorizes OTA to take any action

⁵ R&TC sections 19059 and 19060 provide more specific statutes of limitation for California proposed assessments based on IRS changes or corrections. The shortest statute of limitation is a two-year period from the date FTB is notified of the change. (See R&TC, § 19059.) The record does not reveal when the IRS notified FTB; however, its adjustment became final in August 2021. FTB issued the NPA on September 21, 2022, approximately a year after the IRS made its adjustment. Therefore, the NPA is timely under R&TC section 19059 as well.

⁶ FTB may consider appellant's inability to pay under its payment arrangement or offer-in-compromise programs, which FTB has cited in its briefing. If appellant is experiencing difficulties in paying his liabilities once the decision in this appeal is final, he may contact FTB to discuss payment options. (See <https://www.ftb.ca.gov/pay/if-you-cant-pay/index.html>.)

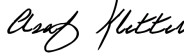
based on appellant's assertion of financial hardship. (See *Appeal of Robinson*, 2018-OTA-059P.)

HOLDING

Appellant has not shown error in FTB's proposed assessment of additional tax, which is based upon a federal determination.

DISPOSITION

FTB's action is sustained.

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Asaf Kletter
Administrative Law Judge

Date Issued: 2/6/2024