

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of: )  
W. TUCKER ) OTA Case No. 22029739  
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**OPINION**

Representing the Parties:

For Appellant: W. Tucker

For Respondent: Leoangelo C. Cristobal, Attorney

For Office of Tax Appeals: Tom Hudson, Attorney

K. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, W. Tucker (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$2,648 and applicable interest for the 2016 tax year.

Appellant waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

**ISSUE**

Whether FTB’s proposed assessment, which is based on a final federal audit determination, should be reduced.

**FACTUAL FINDINGS**

1. Appellant filed a timely California income tax return for the 2016 tax year reporting total tax of \$619. After applying withholding credits, appellant claimed a refund of \$4,084. FTB accepted the return as filed and issued a refund.
2. Subsequently, FTB received information from the IRS in the form of a Fedstar IRS Data Sheet, which showed adjustments to appellant’s 2016 federal tax return. As relevant here, the IRS disallowed travel expenses, car and truck expenses, and other expenses claimed on appellant’s federal Schedule C (Profit or Loss from Business). On

- January 26, 2021, FTB issued a Notice of Proposed Assessment (NPA) that followed these federal adjustments, which increased appellant's taxable income by \$29,837.
3. Appellant protested the NPA. With the protest, appellant submitted copies of IRS Form 14157-A (Tax Return Preparer Fraud or Misconduct Affidavit) and IRS Form 14157 (Return Preparer Complaint).
  4. By letter dated November 2, 2021, FTB informed appellant that the IRS had not reduced or canceled the federal adjustments. Appellant was required to respond with documentation substantiating her position within 30 days. FTB did not receive a response.
  5. On January 14, 2022, FTB issued a Notice of Action affirming the NPA.
  6. This timely appeal followed.

#### DISCUSSION

R&TC section 18622(a) provides that a taxpayer shall either concede the accuracy of a federal determination or state wherein it is erroneous. It is well settled that a deficiency assessment based on federal adjustments is presumptively correct and that a 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.*) The applicable standard for the burden of proof is proof by a preponderance of the evidence that the circumstances the taxpayer asserts are more likely than not to be correct. (*Concrete Pipe and Products of Cal., Inc. v. Construction Laborers Pension Trust for Southern Cal.* (1993) 508 U.S. 602, 622.)

On appeal, appellant does not dispute the calculation of additional tax. Appellant also has not provided any evidence that FTB's determination, which is based on a federal action, is incorrect. Rather, appellant contends that she is not liable for the tax. Appellant asserts that her tax preparer misappropriated the 2016 refund, which was illegally deposited into the tax preparer's bank account. Appellant requests an investigation of the tax preparer. However, the Office of Tax Appeals' (OTA's) function in the appeals process is to determine the correct amount of the taxpayer's California tax liability. (*Appeal of Robinson*, 2018-OTA-059P.) OTA is an administrative agency, and its jurisdiction concerns appeals from actions by FTB and the California Department of Tax and Fee Administration. (See Cal. Code Regs., tit. 18, § 30103.) Thus, OTA does not have the authority to investigate the actions of appellant's tax preparer.

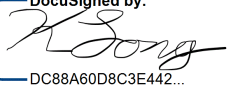
Moreover, there is no statutory authority for OTA to reduce appellant’s tax liability based on the tax preparer’s alleged acts.

HOLDING

FTB’s proposed assessment, which is based on a federal audit determination, should not be reduced.

DISPOSITION

FTB’s determination is sustained.

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Keith T. Long  
Administrative Law Judge

We concur:

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Administrative Law Judge

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Lauren Katagihara  
Administrative Law Judge

Date Issued: 5/3/2024