

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
K. ZYCHLEWICZ) OTA Case No. 221111867
)
)
)
)
)

OPINION

Representing the Parties:

For Appellant: K. Zychlewicz
For Respondent: Tristen Thalhuber, Attorney
For Office of Tax Appeals: Amber Poon, Attorney

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, K. Zychlewicz (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$3,706.00 and applicable interest for the 2017 taxable year.

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

ISSUE

Has appellant shown error in FTB’s proposed assessment of tax for taxable year 2017?

FACTUAL FINDINGS

1. Appellant timely filed a California resident income tax return for the 2017 taxable year, reporting federal adjusted gross income (AGI) of \$12,458 and zero total tax. Appellant reported withholding credits of \$110 as an overpayment, which FTB refunded.
2. FTB received information from the IRS that appellant reported a federal AGI of \$73,779, including wage income of \$12,458, a taxable IRA distribution of \$90,000, and interest income of \$10,787, less other income of \$14,421 and rental-related losses of \$25,045. An IRS account transcript indicates appellant’s federal AGI has not changed.

3. Based on the federal information, FTB increased appellant's taxable income by \$61,321.¹ FTB issued appellant a Notice of Proposed Assessment (NPA), which proposed additional tax of \$3,706, plus interest.
4. Appellant protested the proposed assessment and submitted a document indicating that she received a nontaxable death benefit of \$68,000 in 2015.
5. FTB issued appellant a Notice of Action, affirming the NPA.
6. This timely appeal followed.

DISCUSSION

California residents are taxed upon their entire taxable income regardless of the source of that income. (R&TC, § 17041(a).) Gross income means all income from whatever source derived, including interest and pension income, unless the items of income are specifically excluded by law. (R&TC, § 17071; Internal Revenue Code (IRC), § 61(a); Treas. Reg. § 1.61-1(a).) Generally, a distribution from an individual retirement account is included in income for the year of the distribution. (IRC, §§ 402(a), 408(d)(1).)² FTB's determination is presumed to be correct, and a taxpayer has the burden of proving error. (*Appeal of Wright Capital Holdings LLC*, 2019-OTA-219P.) Unsupported assertions cannot satisfy the taxpayer's burden of proof. (*Appeal of Bracamonte*, 2021-OTA-156P.) Failure to introduce evidence that is within the taxpayer's control gives rise to the presumption that the evidence, if provided, would be unfavorable to the taxpayer's position. (*Appeal of Bindley*, 2019-OTA-179P.)

FTB's proposed assessment is based on federal information indicating that appellant received an IRA distribution of \$90,000 and interest income of \$10,787. FTB subtracted \$39,466 to account for other losses and rental-related losses, as reported on appellant's federal return. FTB's proposed assessment based on that federal information is presumed correct, and appellant bears the burden to show error in FTB's determination. (*Appeal of Gorin*, 2020-OTA-018P.)

Appellant argues that the income discrepancy between her federal and California returns can be explained by her omitting a nontaxable death benefit of \$68,000 she received when her

¹ FTB also disallowed a nonrefundable renter's credit of \$60, which appellant reported on her tax return. Due to the increase in appellant's California AGI, appellant was not eligible for the nonrefundable renter's credit.

² California generally conforms to IRC sections 402(a) and 408(d), with modifications not relevant to this appeal. (R&TC, §§ 17501(a), 17504, 17507.)

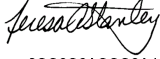
mother passed away. However, appellant received the payment in 2015, while the taxable year at issue is 2017. Also, the IRA distribution appellant reported to the IRS in 2017 was for \$90,000, which is \$22,000 more than the death benefit. Appellant did not submit any evidence or argument to counter her receipt of a \$90,000 IRA distribution or her receipt of interest income of \$10,787. Appellant has not explained why she reported the IRA distribution and interest income on her federal return but did not report them on her California return. Therefore, appellant has not shown error in FTB’s proposed assessment.

HOLDING

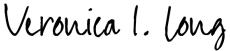
Appellant has not shown error in FTB’s proposed assessment of tax.


DISPOSITION

FTB’s action is sustained.

DocuSigned by:

0CC6C6ACCC8A44D...
Teresa A. Stanley
Administrative Law Judge

We concur:

DocuSigned by:

32D46B0C49C949F...
Veronica I. Long
Administrative Law Judge

DocuSigned by:

8A4294817A67463...
Andrew Wong
Administrative Law Judge

Date Issued: 5/8/2024