

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

In the Matter of the Appeal of: )  
**D. RAMIREZ** ) OTA Case No. 230212585  
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**OPINION**

Representing the Parties:

For Appellant: D. Ramirez  
For Respondent: Dawn Casey, Associate Operation Specialist

V. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, D. Ramirez (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$1,320 and applicable interest for the 2018 tax year.

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

**ISSUE**

Whether appellant has demonstrated error in FTB’s proposed assessment for the 2018 tax year.

**FACTUAL FINDINGS**

1. Appellant filed his California income tax return (Form 540) reporting federal adjusted gross income (AGI) of \$47,206 and California adjustments of \$35,206, resulting in California AGI of \$12,000.
2. On June 30, 2022, FTB issued a Notice of Proposed Assessment (NPA) proposing additional tax of \$1,320, and applicable interest from April 15, 2019, to April 15, 2022, of \$182.17. The NPA stated that it proposed to disallow appellant’s California

- adjustment that excluded \$35,206 from his California AGI. Based on the increased AGI, the NPA also proposed to disallow appellant's claimed renter's credit of \$60.
3. Appellant protested the NPA.
  4. On October 10, 2022, FTB responded to appellant's protest, restated its position, and requested that appellant provide information to support his position.
  5. Appellant responded but did not provide additional information.
  6. FTB obtained appellant's wage and income transcripts, which showed total earned wage income of \$47,204 for the 2018 tax year.
  7. On July 13, 2022, appellant made a payment of \$1,502.17 and paid the NPA's assessment in full.
  8. On January 10, 2023, FTB issued a Notice of Action (NOA) affirming the NPA. The NOA included interest from July 15, 2022, to January 10, 2023, of \$23.10. However, the NOA stated that it had received appellant's July 13, 2022 payment of \$1,502.17, but had not yet updated its calculation to reflect the payment. The NOA stated that interest would only be charged until the date the payment was received.
  9. Appellant then filed this timely appeal.

### DISCUSSION

A presumption of correctness attends FTB's determinations of fact, and taxpayers have the burden of proving such determinations erroneous. (*Appeal of Head and Feliciano*, 2020-OTA-127P.) FTB's determination that an exclusion from income should be disallowed is presumed correct, and taxpayers must prove their entitlement to the claimed exclusion. (*Ibid.*)

Internal Revenue Code (IRC) section 61(a) defines "gross income" to include "all income from whatever source derived" except as otherwise provided by statute.<sup>1</sup> Income tax deductions are a matter of legislative grace, and the taxpayer bears the burden of establishing entitlement to the deductions claimed. (*Appeal of Vardell*, 220-OTA-190P, citing *New Colonial Ice Co. v. Helvering* (1934) 292 U.S. 435, 440.) To meet this burden, a taxpayer must point to an applicable statute authorizing the deduction and show by credible evidence that the deduction claimed falls within the scope of the statute. (*Appeal of Dandridge*, 2019-OTA-458P; *Appeal of Jindal*, 2019-OTA-372P.)

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<sup>1</sup> R&TC section 17071 incorporates IRC section 61.

Appellant's Form 540 reported a federal AGI of \$47,206, with a California adjustment of \$35,206, resulting in a California AGI of \$12,000. Appellant's wage and income transcript corroborates that he received wage income of \$47,204 in the 2018 tax year. Appellant has not provided any explanation for his subtraction of \$35,206 from his California AGI. Instead, appellant asserts that FTB has not provided him with an explanation of its proposed assessment. However, a review of the record shows that FTB provided appellant with an explanation of its position in its June 30, 2022 NPA, in its October 10, 2022 general correspondence letter, in its January 10, 2023 NOA, and again in its opening brief in this appeal, filed April 24, 2023. FTB has consistently explained its position in that appellant improperly deducted \$35,206 from his California AGI and that the resulting increase in his AGI caused him to not qualify for the renter's credit. FTB's October 10, 2022 general correspondence letter requested that appellant provide information to support his position. Although appellant responded to FTB's communications twice, appellant did not provide an explanation for the adjustment, nor does he do so on appeal.

Appellant also states that the NOA erroneously included interest from July 14, 2022, through January 10, 2022, although he paid the assessment in full on July 13, 2022. However, the NOA states that the computation had not yet been updated to reflect the payment, confirms receipt of the payment, and states that interest will only be charged until the date payment was received. Appellant may contact FTB to confirm the interest adjustment.

Accordingly, appellant has not demonstrated error in FTB's proposed determination.

HOLDING

Appellant has not demonstrated error in FTB’s proposed assessment for the 2018 tax year.

DISPOSITION

FTB’s action is sustained.

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Veronica I. Long  
Administrative Law Judge

We concur:

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*Eddy Y. H. Lam*  
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Eddy Y.H. Lam  
Administrative Law Judge

DocuSigned by:  
*Michael F. Geary*  
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Michael F. Geary  
Administrative Law Judge

Date Issued: 5/28/2024