

2. Appellants' federal adjusted gross income in the amount of \$210,186 consisted of: \$109,256 in wages compensation from CP Kelco US, \$96,808 in wages compensation from Defense Finance & Actg Serv, \$1 in wages compensation from V. Schlalmon, \$261 in taxable interest, \$2,703 in ordinary dividends, and \$1,157 in capital gain.
3. Although the W-2 received from V. Schlalmon reported \$1 of wages compensation, that W-2 also reported \$25,208 in Social Security and Medicare wages. Appellants did not report the \$25,208 in Social Security and Medicare wages as part of their federal adjusted gross income.
4. FTB processed appellants' timely filed tax return.
5. Thereafter, FTB reviewed the tax return and issued a Notice of Proposed Assessment (NPA), which disallowed the Schedule CA wage subtraction of \$25,208.
6. Appellants protested the NPA and stated that the wage subtraction "is an error caused by TurboTax."
7. Thereafter, FTB issued a Notice of Action affirming the NPA, reiterating that the \$25,208 Schedule CA subtraction is disallowed.
8. This timely appeal followed.

DISCUSSION

FTB's determination is presumed correct and the taxpayers have the burden of proving error. (*Appeal of Chen and Chi*, 2020-OTA-021P.) Unsupported assertions are not sufficient to satisfy taxpayers' burden of proof. (*Ibid.*) In the absence of credible, competent, and relevant evidence showing error in FTB's determination, FTB's determination must be upheld. (*Ibid.*) Taxpayers' failure to produce evidence that is within their control gives rise to a presumption that such evidence, if provided, would be unfavorable to the taxpayers' case. (*Appeal of Bindley*, 2019-OTA-179P.)

Appellants assert that they used TurboTax software and proceeded to file their California tax return after the TurboTax software confirmed that no errors were found. Appellants continue to state that "as an error caused by TurboTax software but not [appellants] as taxpayers," appellants request that FTB not assess the additional tax and interest due to appellants' financial hardships. However, a mistake stemming from the use of a tax preparation software is not evidence showing an error in FTB's determination. On appeal, appellants did not provide any

credible, competent, or relevant evidence to demonstrate that any of its wages should be entitled to a California subtraction adjustment.

The purpose of Schedule CA is to account for the differences between federal and California tax laws. As California residents, appellants are subject to taxation on all taxable income. (R&TC, § 17041(a).) The Office of Tax Appeals acknowledges that appellants' subtraction of \$25,208 relates to the Social Security and Medicare wages reported on the W-2 issued by V. Schlalmon. However, appellants did not report on their original tax return that the \$25,208 of Social Security and Medical wages were part of their federal adjusted gross income.¹ In this context, when appellants subtract \$25,208 from the federal adjusted gross income, they are excluding income without an explanation as to why this amount is not subject to California tax. This is especially pertinent since the \$25,208 of the reported Social Security and Medicare wages were not initially included in the federal adjusted gross income. With regards to appellants' financial hardship argument, if appellants are experiencing difficulties in paying their liabilities once the decision in this appeal is final, they may contact FTB to discuss payment options. (See <https://www.ftb.ca.gov/pay/if-you-cant-pay/index.html>.) As such, appellants have not met their burden to demonstrate that FTB's disallowance of the \$25,208 subtraction is made in error.

HOLDING

Appellants have not demonstrated error in FTB's proposed assessment.

DISPOSITION

FTB's action is sustained.

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

Date Issued: 11/21/2023

¹ The W-2 issued by V. Schlalmon reported \$1 in wages compensation, which appellant included as part of their federal adjusted gross income. However, that W-2 also reported \$25,208 in Social Security and Medicare wages, which appellants did not include in their federal adjusted gross income. FTB contends that \$25,208 are associated to In-Home Supportive Services (IHSS) income.