

In the Matter of the Appeal of:) OTA Case No. 230713722
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J. GAMPER AND)
E. GAMPER)
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1. Appellants timely filed a joint 2018 California tax return.
2. FTB subsequently received information from the IRS showing that the IRS adjusted appellants' 2018 federal taxable income to account for \$112,521 of gambling winnings.

3. Based on this information, FTB made corresponding adjustments to appellants' California taxable income and issued a Notice of Proposed Assessment (NPA) proposing an additional tax of \$8,016, plus applicable interest.
4. Appellants protested the NPA and stated that the federal adjustment was still in dispute with the IRS.
5. In a letter to appellants dated April 7, 2023, FTB acknowledged that it received additional information from the IRS showing that the IRS reduced the federal assessment due to an allowance for itemized gambling loss deductions of \$82,560.
6. Consequently, FTB issued a Notice of Action (NOA) revising the NPA to correspond with the federal revision. The NOA increases appellants' California taxable income by \$112,521, allows gambling loss deductions of \$82,560 and disallows appellants' claimed standard deduction of \$8,802. The NOA reduces the proposed additional tax from \$8,016 to \$3,430, plus applicable interest.
7. This timely appeal follows.
8. On appeal, FTB produces two copies of appellants' 2018 CP2000 Data Sheet dated July 7, 2023, and February 14, 2024, and two copies of appellants' 2018 federal account transcripts dated August 31, 2023, and February 14, 2024.

DISCUSSION

R&TC section 18622(a) requires a taxpayer to report federal changes in income or deductions to FTB and to concede the accuracy of the federal changes or state where they are erroneous. A proposed assessment based on a federal adjustment is presumed to be correct and the taxpayer bears the burden of proving that FTB's determination is erroneous. (*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. (*Ibid.*) The applicable burden of proof is by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(c).) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof with respect to a proposed assessment based on a federal action. (*Appeal of Gorin*, 2020-OTA-018P.)

Here, FTB received information from the IRS showing that the IRS increased appellants' 2018 federal taxable income to include \$112,521 of gambling winnings. When the IRS assessment was revised to allow gambling losses, FTB made conforming adjustments to appellants' 2018 California taxable income, which resulted in a \$3,430 proposed tax liability,

plus applicable interest.¹ Because FTB's proposed assessment was based on federal adjustments, it is presumed correct, and appellants have the burden to show that FTB's proposed assessment is erroneous.

Appellants contend that the IRS has not resolved the dispute, and, as of June 25, 2023, appellants anticipated that there would be a federal resolution within 90 days. On appeal, FTB provides two copies of appellants' 2018 CP2000 Data Sheets dated July 7, 2023, and February 14, 2024, and two copies of appellants' 2018 federal account transcripts dated August 31, 2023, and February 14, 2024, which include the federal adjustment and do not indicate that it was withdrawn or further modified. Appellants have not provided information to substantiate that the federal assessment is not yet final or that the federal assessment is erroneous. Appellants also have not presented evidence to substantiate any additional gambling losses. FTB's proposed assessment based on the final federal determination must therefore be sustained.

¹ R&TC section 17071 conforms to Internal Revenue Code (IRC) section 61, which defines "gross income" as "all income from whatever source derived," unless an item of income is specifically excluded by law. Gambling winnings are not excluded from "gross income," but gambling losses may be deducted as an itemized deduction to the extent of gambling winnings. (IRC, § 165(d), R&TC, § 17201.) The taxpayer bears the burden of proving the gambling losses sustained during the tax year. (*Mack v. Commissioner* (6th Cir. 1970) 429 F.2d 182, affg. T.C. Memo. 1969-26.)

HOLDING

Appellants have not established error in FTB's proposed assessment, which is based on a final federal determination.

DISPOSITION

FTB's action is sustained.

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Veronica I. Long
Administrative Law Judge

Date Issued: 6/21/2024