

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 230312789
M. WOELLERT)
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OPINION

Representing the Parties:

For Appellant: M. Woellert

For Respondent: Andrea Watkins, Attorney

For Office of Tax Appeals: Andrew Jacobson, Attorney

V. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, M. Woellert (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$921 and applicable interest for tax year 2018.

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

ISSUE

Whether appellant has shown error in FTB’s proposed assessment of additional tax for 2018, which is based on a federal determination.

FACTUAL FINDINGS

1. During tax year 2018, appellant was the president, chief executive officer, and 100 percent shareholder of Woellert Industries Inc. (Woellert Industries).
2. Woellert Industries filed a 2018 U.S. Income Tax Return for an S Corporation (Form 1120S) reporting that it paid appellant compensation of \$72,000. Woellert Industries reported on federal Form 1125-E stating that it paid appellant compensation of \$72,000.

3. On October 14, 2019, appellant filed a 2018 California Resident Income Tax Return (Form 540) (2018 California Return) on which he reported wages of \$43,200. Appellant attached a 2018 Form W-2 issued by Woellert Industries, which shows state wages of \$43,200.
4. FTB accepted appellant's 2018 California Return as filed.
5. Subsequently, FTB received information from the IRS showing that it had reviewed appellant's 2018 federal return and had increased his reported federal taxable income from \$154,730 to \$183,530, an increase of \$28,800, based on unreported taxable wages. A 2018 Federal Wage and Income Transcript shows that appellant received wages, tips, and other compensation of \$72,000 from Woellert Industries. The IRS computed the omitted wage income of \$28,800 by subtracting reported wages of \$43,200 from total wages of \$72,000 ($\$72,000 - \$43,200 = \$28,800$).
6. According to appellant's 2018 Federal Account Transcript, the IRS assessed additional federal income tax against appellant on September 20, 2021.
7. Appellant did not report the 2018 federal adjustment to FTB.
8. On September 21, 2022, FTB issued a Notice of Proposed Assessment (NPA), which increased appellant's 2018 California taxable income by \$28,800, based on unreported taxable wages, resulting in a proposed additional tax of \$921, plus applicable interest. The NPA stated that the proposed assessment was based on a federal determination.
9. In early October 2022, appellant protested the NPA on the grounds that he had never received the additional income of \$28,000 and someone had fraudulently used his social security number. Appellant also stated that he had never received a notice from the IRS alerting him to the federal determination.
10. In a letter to appellant dated December 12, 2022, FTB reiterated that it continued to rely on the 2018 federal determination and that it would not revise its proposed assessment unless appellant provided evidence showing that the IRS had revised its own assessment.
11. Appellant did not respond to FTB's December 12, 2022 letter.
12. On February 10, 2023, FTB issued a Notice of Action that affirmed its 2018 NPA.
13. This timely appeal followed.

DISCUSSION

When the IRS makes a final federal determination, a taxpayer must concede the accuracy of the federal changes to a taxpayer's income or state where the changes are erroneous. (R&TC, § 18622(a).) It is well settled that a proposed assessment based on federal adjustments to income is presumed to be correct, and a taxpayer bears the burden of proving that FTB's determination is erroneous. (*Appeal of Valenti*, 2021-OTA-093P.) The applicable burden of proof is by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(b).) In the absence of credible, competent, and relevant evidence showing that FTB's determinations are incorrect, such determinations must be upheld. (*Appeal of Valenti*, *supra*.) Unsupported assertions are not sufficient 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 proposed additional tax based on the IRS's addition of omitted income of \$28,800 to appellant's 2018 federal taxable income. Therefore, FTB's proposed assessment is presumed to be correct, and appellant has the burden of showing otherwise. (*Appeal of Valenti*, *supra*.)

Appellant does not dispute that the IRS issued a final tax assessment based on appellant's unreported 2018 income of \$28,800. On appeal, appellant has failed to provide any evidence showing that the IRS revised, reversed, or is currently reviewing its adjustments for tax year 2018. As previously noted, appellant's 2018 Federal Account Transcript shows that the IRS assessed additional tax against appellant on September 20, 2021. The 2018 Federal Account Transcript does not show that the IRS subsequently cancelled or modified its 2018 federal assessment. Therefore, OTA finds that the IRS issued appellant a final federal determination for tax year 2018 on which FTB based its own proposed assessment.

Appellant argues that the federal adjustment is incorrect because he never received the additional income of \$28,800 and someone fraudulently used his social security number. Appellant has not provided any evidence to support this contention. This unsubstantiated contention by itself is insufficient to satisfy appellant's burden of proof. (*Appeal of Gorin*, *supra*.) Moreover, appellant has failed to explain why Woellert Industries, his employer and an S corporation of which he is the president, chief executive officer, and sole shareholder, issued a federal Form 1125-E showing that it paid him compensation of \$72,000. The amount reported on the federal Form 1125-E matches the wages, tips, and compensation of \$72,000 shown on

appellant’s 2018 Federal Income Transcript. As previously explained, the IRS computed the omitted wage income of \$28,800 by subtracting reported wages of \$43,200 from total wages of \$72,000 ($\$72,000 - \$43,200 = \$28,800$). Accordingly, the evidence in this appeal shows that the additional taxable income of \$28,800 is based on the federal Form 1125-E attached to Woellert Industries’ 2018 federal return, which contradicts appellant’s argument that the federal income adjustment is incorrect.

Accordingly, OTA finds that appellant has not carried his burden of proving error in FTB’s determination.

HOLDING

Appellant has not demonstrated 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

We concur:

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Huy “Mike” Le
Administrative Law Judge

DocuSigned by:
Lauren Katagihara
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Lauren Katagihara
Administrative Law Judge

Date Issued: 6/24/2024