

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
J. GLOSS) OTA Case No. 230513227
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OPINION

Representing the Parties:

For Appellant: J. Gloss

For Respondent: Dawn Casey, Associate Operation Specialist

H. LE, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, J. Gloss (appellant) appeals an action by the Franchise Tax Board (respondent) proposing additional tax of \$11,818 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 established error in the proposed assessment of tax.

FACTUAL FINDINGS

1. Appellant filed a 2018 California Resident Income Tax Return. On Schedule CA (540), California Adjustments – Residents, appellant reported IRAs/pensions/annuities of \$206,666 as taxable amounts from the federal return and subtracted \$133,864 from this amount.
2. Appellant’s 1099-R, Distributions from Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc., reported a taxable amount of \$206,666.
3. Respondent received federal tax information from the IRS, indicating that appellant received \$206,666 in taxable pensions.

4. Respondent determined that appellant's \$133,864 Schedule CA subtraction of appellant's pension income was improper and issued a Notice of Proposed Assessment (NPA) that increased appellant's taxable income by \$133,864.
5. Appellant filed a protest in response to the NPA. Respondent issued a Notice of Action affirming the NPA. This timely appeal followed.

DISCUSSION

Respondent's determinations are generally presumed correct, and the taxpayer bears the burden of proving otherwise. (*Appeal of Vardell*, 2020-OTA-190P.) The applicable burden of proof is by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(b).) A preponderance of evidence means the taxpayer must establish by documentation or other evidence the circumstances it asserts are more likely than not to be correct. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.) Unsupported assertions cannot satisfy a taxpayer's burden of proof. (*Appeal of Vardell*, *supra*.)

California residents are taxed upon their entire taxable income. (R&TC, § 17041(a).) California conforms to the federal definition of gross income, except as otherwise provided. (R&TC, § 17071.) Federal law provides that gross income means all income from whatever source derived, including pension income, unless excluded by law. (Internal Revenue Code, § 61(a); Treas. Reg. § 1.61-1(a).)


Appellant filed a 2018 California Resident Income Tax Return and is appropriately taxed on the entire taxable income, including the pension income. Appellant's sole argument is that the California subtraction of \$133,864 is "proper and not unusual and should not be disallowed." However, appellant has not explained why the subtraction is proper and has not submitted evidence that proves the subtraction is proper. Accordingly, the Office of Tax Appeals (OTA) finds appellant's argument to be unpersuasive.

HOLDING


Appellant has not established error in the proposed assessment of tax.


DISPOSITION

OTA sustains respondent’s action.

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Huy “Mike” Le
Administrative Law Judge

We concur:

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Eddy Y.H. Lam
Administrative Law Judge

DocuSigned by:

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Teresa A. Stanley
Administrative Law Judge

Date Issued: 7/9/2024