

3. Appellants protested the NPA and provided a copy of an August 11, 2022 Order of the U.S. Tax Court (Order) reducing the IRS assessment. The Order reduced the federal assessment to \$1,626. This reduction reflects an increase of appellants' federal AGI of only \$7,558.¹
4. FTB revised its proposed assessment and issued a Notice of Action (NOA), which proposed to increase appellants' income by \$7,325² and proposed additional tax of \$584, plus interest.
5. This timely appeal followed. On appeal, FTB provides a copy of appellants' federal account transcript dated September 21, 2023, reflecting a federal AGI of \$7,558 more than appellants' reported California AGI, and showing a final tax assessment of \$1,626.

DISCUSSION

Issue 1: Whether appellants have established error in FTB's proposed assessment, which is based on a final federal determination.

A taxpayer shall either concede the accuracy of a federal determination or state where it is erroneous. (R&TC, § 18622(a).) If the IRS makes a change or correction to "any item required to be shown on a federal tax return, including any gross income, deduction, penalty, credit, or tax for any year," the taxpayer must report the federal change to FTB within six months after the date it becomes final. (*Ibid.*) A deficiency assessment based on a federal audit report is presumptively correct, and the taxpayers bear the burden of proving that the determination is erroneous. (*Appeal of Gorin*, 2020-OTA-018P.) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof. (*Ibid.*)

Income tax deductions are a matter of legislative grace, and the taxpayers bear the burden of establishing entitlement to the deductions claimed. (*Appeal of Vardell*, 2020-OTA-190P.) To meet this burden, taxpayers must point to an applicable statute and show by credible evidence that the transactions in question come within its terms. (*Appeal of Jindal*, 2019-OTA-372P.)

Here, pursuant to the Order, the IRS increased appellants' federal AGI by \$7,558 of disallowed Schedule C deductions. Subsequently, based on the IRS's disallowance, FTB issued

¹ The original IRS assessment proposed to increase appellants' federal AGI by \$31,075, and the U.S. Tax Court reduced the amount of the increase to appellants' federal AGI by \$23,517 (\$31,075 minus \$7,558.)

² \$7,558 minus a \$233 self-employment tax deduction.

an NOA proposing to increase appellants' California AGI by \$7,325. To prevail in this appeal, appellants must show that either the IRS further reduced or cancelled its assessment, or that regardless of the federal action, appellants are entitled to deduct the disallowed amounts.

Appellants' 2018 IRS Account Transcript shows that the IRS did not further reduce or cancel its assessment. In addition, appellants have not provided evidence or argument supporting that they are otherwise entitled to deduct the disallowed amounts. Thus, appellants have not met their burden of proving error in FTB's proposed assessment, or in the federal determination upon which FTB's proposed assessment is based.

Issue 2: Whether OTA has jurisdiction to determine whether a tax was discharged in bankruptcy.

Appellants contend that their tax liability was discharged as a result of bankruptcy proceedings. However, OTA does not have jurisdiction to determine whether a liability has been or should have been discharged in bankruptcy under the United States Bankruptcy Code. (Cal. Code Regs., tit. 18, § 30104(k); see also *Appeal of Savage*, 2020-OTA-328P.) Accordingly, OTA will not address this issue further.

HOLDINGS

1. Appellants have not established error in FTB’s proposed assessment, which is based on a final federal determination.
2. OTA does not have jurisdiction to determine whether a tax was discharged in bankruptcy.

DISPOSITION

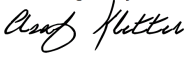
FTB’s action is sustained.

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 Veronica I. Long
 Administrative Law Judge

We concur:

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 Asaf Kletter
 Administrative Law Judge

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 Josh Lambert
 Administrative Law Judge

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