

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
T. HAST AND)
C. HAST)
_____)
OTA Case No. 220510304

OPINION

Representing the Parties:

For Appellants: T. Hast
C. Hast

For Respondent: Andrea Watkins, Attorney

For Office of Tax Appeals: Linda Frenklak, Attorney

H. LE, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, T. Hast and C. Hast (appellants) appeal an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$3,535 and applicable interest for the 2017 tax year.¹

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

ISSUE

Whether appellants have established error in FTB’s revised proposed assessment, which is based on a federal determination.

FACTUAL FINDINGS

1. Appellants filed a California Resident Income Tax Return for the 2017 tax year.
2. FTB received information from the IRS indicating that the IRS increased appellants’ federal taxable income by various adjustments, including a gross distribution of \$34,368 from California Public Employees’ Retirement System (CalPERS).

¹ As discussed below, FTB on appeal revises the amount of the proposed additional tax to \$666.

3. Appellants did not report the federal adjustments to FTB. Consequently, FTB issued appellants a Notice of Proposed Assessment (NPA). The NPA increased appellants' California taxable income in accordance with the federal adjustments that California conforms to, including the adjustment for the gross distribution of \$34,368 from CalPERS.²
4. Appellants protested the NPA and requested that FTB postpone its action pending resolution of the federal determination. In response, FTB placed a four-month hold on the matter.
5. After appellants failed to respond, FTB issued a Notice of Action affirming the NPA.
6. This timely appeal followed.
7. On appeal, FTB agrees to modify the NPA to exclude the CalPERS income adjustment of \$34,368, resulting in a revised proposed assessment of additional tax of \$666.³

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 deficiency assessment based on a federal adjustment 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.) In the absence of credible, competent, and relevant evidence showing that FTB's determination is incorrect, it must be upheld. (*Ibid.*)

Here, FTB proposed an assessment based on information from the IRS, which indicated that the IRS had increased appellants' federal taxable income for the 2017 tax year through various adjustments. One of these adjustments was due to a gross distribution of \$34,368 from CalPERS. On appeal, appellants' sole argument is that the CalPERS distribution of \$34,368 qualifies as non-taxable industrial disability retirement income. FTB has conceded this point on appeal and revised the proposed assessment accordingly. However, for the remaining

² The NPA also increased appellants' California taxable income by the following: taxable wages of \$9,628, interest of \$18, and pension/annuities of \$1,471.

³ Appellants provided FTB with a copy of a Form 1099-R that shows the gross distribution of \$34,368 appellant-husband received from CalPERS is non-taxable and information indicating that this distribution consists of non-taxable industrial disability retirement income.

adjustments, appellants have not submitted any arguments or evidence to contest them.⁴ Consequently, appellants have not demonstrated any error in FTB’s revised proposed assessment.

HOLDING

Appellants have not shown error in FTB’s revised proposed assessment, which is based on a federal determination.

DISPOSITION

FTB’s action is modified as conceded by FTB on appeal by reducing the proposed additional tax to \$666 but is otherwise sustained in full.

DocuSigned by:
Huy "Mike" Le
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Huy "Mike" Le
Administrative Law Judge

We concur:

DocuSigned by:
Suzanne B. Brown
47F45ABE89E34D0...
Suzanne B. Brown
Administrative Law Judge

DocuSigned by:
Cheryl Akin
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Cheryl L. Akin
Administrative Law Judge

Date Issued: 6/18/2024

⁴ At appellants’ request, the Office of Tax Appeals deferred this appeal twice to allow appellants time to resolve their dispute with the IRS. However, appellants have not provided evidence indicating that the IRS has cancelled or revised its remaining adjustments.