

- (AGI) of \$145,676, but California AGI as only \$1,350 because appellant claimed a California subtraction of \$144,326¹ ($\$145,676 - \$144,326 = \$1,350$). Appellant also claimed itemized deductions of \$30,184 and reported zero taxable income.
4. On July 29, 2021, FTB issued appellant a Notice of Proposed Assessment (NPA) proposing to disallow the California subtraction and increase appellant's California taxable income to \$115,492.² The NPA proposed additional tax of \$7,983 plus interest.
 5. Appellant protested the NPA. FTB issued appellant a January 13, 2023 position letter stating that it would affirm the NPA. Appellant did not respond to the position letter. On March 1, 2023, FTB issued a Notice of Action affirming the NPA.
 6. This timely appeal followed.

DISCUSSION

An FTB determination is generally presumed to be correct, and a taxpayer bears the burden of proving otherwise. (*Appeal of Nag and Rudd*, 2023-OTA-150P.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Ibid.*) In the absence of credible, competent, and relevant evidence showing that FTB's determination is incorrect, it must be upheld. (*Ibid.*)

California has adopted federal tax law regarding the treatment of S corporations and their shareholders, except as otherwise provided under the R&TC. (R&TC, § 17087.5, see also *The 2009 Metropoulos Family Trust, et al. v. Franchise Tax Bd.* (2022) 79 Cal.App.5th 245, 268 (*Metropoulos*)). For both federal and California tax purposes, the S corporation's income and losses are passed through on a pro rata basis to the corporation's shareholders, who must report them on their individual returns. (Internal Revenue Code (IRC), §§ 1363(b), 1366; R&TC, §§ 17087.5, 23800; *Appeal of Johnson*, 2022-OTA-166P.) The character of a shareholder's pro rata share of S corporation income is determined as if such income were realized directly from the source from which it was realized by the corporation or incurred in the same manner as incurred by the corporation. (IRC, § 1366(b); R&TC, § 23801; see also *Metropoulos, supra*,

¹ There is a small discrepancy between appellant's pro rata share of S corporation income, \$144,361, and appellant's claimed California subtraction of \$144,326. The discrepancy does not affect the outcome of this appeal.

² Appellant reported a California AGI of \$1,350, claimed a California subtraction of \$144,326 which FTB later disallowed, and reported itemized deductions of \$30,184. Therefore, appellant's revised California AGI was \$115,492 ($\$1,350 + \$144,326 - \$30,184 = \$115,492$).

at p. 269.) An S corporation uses California Schedule K-1 to report the shareholder's pro rata share of the S corporation's income, deductions, credits, etc., and the shareholder uses the information from the California Schedule K-1 to file his or her return and is liable for the income tax on his or her pro rata share of the S corporation's income. (*Appeal of Johnson, supra.*)


On appeal, appellant asserts that an "S [c]orporation's distribution income is subject to corporation tax ... and income credit is not taxed for [i]ndividuals." OTA interprets appellant to assert that shareholders are not subject to California individual income tax on their pro rata share of S corporation income. However, as described above, a pro rata share of the S corporation's income and losses is passed through to shareholders, whose pro rata share of income is reported on Schedule K-1, and shareholders are liable for California income tax on their share of the S corporation's income. (*Appeal of Johnson, supra*; IRC, § 1366(a)(1); R&TC, § 17087.5.) Appellant was the sole shareholder of JSWD and therefore is subject to individual income tax on the S corporation pass-through income of \$144,361 under the above authorities. Appellant provides no authority, and OTA is not aware of any, that exempts appellant's pro rata share of income from California individual income tax. Accordingly, appellant has failed to show error in FTB's inclusion of appellant's pro rata share of JSWD income in his California AGI.

HOLDING


Appellant has not shown error in FTB’s proposed assessment of additional tax.


DISPOSITION

FTB’s action is sustained.

DocuSigned by:

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Asaf Kletter
Administrative Law Judge

We concur:

DocuSigned by:

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Amanda Vassigh
Administrative Law Judge

DocuSigned by:

F8E81582726F448...
Richard Tay
Administrative Law Judge

Date Issued: 3/26/2024