

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 231114782
C. SULLIVAN AND)
M. SULLIVAN)
_____)

OPINION

Representing the Parties:

For Appellants: C. Sullivan
M. Sullivan

For Respondent: Tristen Thalhuber, Attorney

For Office of Tax Appeals: Thomas Lo Grossman, Attorney

S. HOSEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, C. Sullivan and M. Sullivan (appellants) appeal an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$9,243 and applicable interest for the 2018 tax year.

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

ISSUE

Whether appellants have met their burden of proving error in FTB’s proposed assessment of additional tax that is based on a federal assessment.

FACTUAL FINDINGS

1. Appellants timely filed a 2018 California nonresident income tax return.
2. FTB received information from the IRS showing that the IRS increased appellants’ 2018 adjusted gross income by, among other things, appellants’ unreported taxable pension/annuity income. On October 4, 2021, the IRS adjustment became a final federal determination.

3. Based on the information provided by the IRS, FTB made a corresponding adjustment to appellants' California taxable income and issued to appellants a Notice of Proposed Assessment (NPA) for the 2018 tax year, which proposed additional tax and applicable interest.
4. Appellants timely protested the NPA. In a letter dated October 17, 2022, appellants stated that the income at issue arose from funds erroneously deposited into a retirement account.
5. The most recently submitted IRS account transcript, as of December 5, 2023, indicates that there has been no change to the federal determination from October 4, 2021.
6. FTB issued a Notice of Action on October 23, 2023, affirming the NPA in full.
7. Appellants timely appealed.

DISCUSSION

R&TC section 18622(a) provides that a taxpayer shall either concede the accuracy of a federal determination or state wherein it is erroneous. It is well established that FTB's proposed assessment based on a federal adjustment to income is presumptively correct, and that a taxpayer bears the burden of proving otherwise. (*Appeal of Black*, 2023-OTA-023P.) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof. (*Appeal of Gorin*, 2020-OTA-018P.)

On appeal, appellants assert that they sold real property in 2018 to pay off a loan on their home. Appellants maintain that the funds from the real property sale were in their checking account for a brief period but should not be considered income. At protest, appellants argued that the sales proceeds from the real property were erroneously deposited into a retirement account because of a bank error.

Appellants, however, do not directly address the IRS determination or state why it was erroneous. Appellants do not explain why the funds withdrawn from the retirement account should not be taxable. Appellants provide no evidence of a bank error, or a corrected Form 1099-S for the 2018 taxable year, and the record shows there has been no change to the IRS determination. Appellants also do not explain why withdrawing funds from a retirement account to pay off a loan would render an otherwise taxable withdrawal nontaxable. Because appellants only provide unsupported assertions, they have not met their burden of proof to establish error in FTB's proposed assessment.

HOLDING

Appellants have not met their burden of proving error in FTB’s proposed assessment of additional tax that is based on a federal assessment.

DISPOSITION

FTB’s action is sustained in full.

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Sara A. Hosey
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Sara A. Hosey
Administrative Law Judge

We concur:

DocuSigned by:
Kenneth Gast
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Kenneth Gast
Administrative Law Judge

DocuSigned by:
Asaf Kletter
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Asaf Kletter
Administrative Law Judge

Date Issued: 8/13/2024