

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
L. SLIVINSKY) OTA Case No. 21129302
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OPINION

Representing the Parties:

For Appellant: L. Slivinsky
For Respondent: Alisa L. Pinarbasi, Attorney

L. KATAGIHARA, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, L. Slivinsky (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$6,318 and applicable interest for the 2017 tax year.

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

ISSUE

Whether appellant has shown error in FTB’s proposed assessment, which is based on a federal determination.

FACTUAL FINDINGS

1. Appellant received \$67,948 in income from his business during the 2017 tax year that he did not report on his federal or state income tax returns.
2. FTB received information reflecting that the IRS increased appellant’s federal adjusted gross income (AGI) to account for the additional income. The IRS’s adjustment became a final federal determination.
3. Based on this federal determination, FTB made a corresponding change to appellant’s California AGI and issued to appellant a Notice of Proposed Assessment (NPA) for additional tax of \$6,318 and applicable interest for the 2017 tax year.

4. In December 2020, appellant filed both an amended California and amended federal return (the amended California return was based on the amended federal return). FTB treated appellant's amended California return as a protest of the NPA. FTB informed appellant that if he provided a copy of a federal account transcript reflecting that the IRS accepted or otherwise reduced his AGI, FTB would make corresponding changes.
5. Appellant did not timely respond, so FTB issued a Notice of Action affirming the NPA.
6. This timely appeal followed. On appeal, FTB provides a copy of appellant's federal account transcript, dated October 27, 2023, reflecting that the IRS had not reduced appellant's AGI.

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 not sufficient to satisfy a taxpayer's burden of proof with respect to an assessment based on a federal action. (*Appeal of Gorin*, 2020-OTA-018P.)

Appellant asserts the federal determination is incorrect and that instead, the IRS owes him a refund. In support of this assertion, appellant submits a copy of a November 27, 2023 letter he sent to the IRS.¹ In this letter, appellant explains why his federal claim for refund should be granted and references revisions he made in his December 2020 amended federal return that reduced his AGI. However, appellant has not provided any evidence that the IRS cancelled or reduced its determination after receiving the letter or the amended federal return. Moreover, the October 27, 2023 federal account transcript is evidence that the IRS has neither accepted appellant's amended return nor reduced his AGI.

Appellant provides no evidence that his revisions, and not the federal determination, are correct. As unsupported assertions are insufficient to meet appellant's burden of proof, appellant has not shown error in FTB's proposed assessment. (See *Appeal of Gorin, supra.*) Therefore, FTB's proposed assessment, which is based on the federal determination, is presumed to be correct.

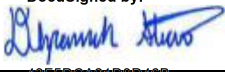
¹ The letter was appellant's response to the IRS's denial of his federal claim for refund.

HOLDING

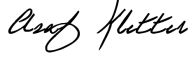
Appellant has not shown error in FTB’s proposed assessment, which is based on a federal determination.


DISPOSITION

FTB’s action is sustained.

DocuSigned by:

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Lauren Katagihara
Administrative Law Judge

We concur:

DocuSigned by:

D17AEDDCAAB045B...
Asaf Kletter
Administrative Law Judge

DocuSigned by:

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Sara A. Hosey
Administrative Law Judge

Date Issued: 7/24/2024