

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 230613534  
V. DEVALL )  
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**OPINION**

Representing the Parties:

For Appellant: V. Devall  
For Respondent: Kristin K. Yeager, Program Specialist  
For Office of Tax Appeals: Thomas Lo Grossman, Attorney

L. KATAGIHARA, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, V. Devall (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$812 and applicable interest for the 2015 tax year.<sup>1</sup>

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 upon a federal adjustment.

**FACTUAL FINDINGS**

1. Appellant timely filed a 2015 California nonresident income tax return (Return).
2. FTB received information in early 2019 from the IRS showing that the IRS adjusted appellant’s federal adjusted gross income by incorporating appellant’s unreported wages

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<sup>1</sup> At the time appellant filed this appeal, FTB’s proposed assessment was for \$3,060, plus interest. As discussed in further detail below, FTB’s concedes that its proposed assessment should be reduced to \$812, plus interest.

- and disallowing his claimed business expenses, legal expenses, and miscellaneous itemized deductions.
3. Based on the information provided by the IRS, FTB made corresponding adjustments to appellant's Return and issued to appellant a Notice of Proposed Assessment (NPA) proposing additional tax of \$3,227, plus interest.
  4. Appellant protested the NPA. With his protest, appellant submitted documentation, including a copy of IRS Form 5278, Statement - Income Tax Changes (Form 5278). Form 5278 shows the IRS made additional adjustments to its federal assessment. Appellant also submitted a federal account transcript for the 2015 tax year dated May 27, 2020, which reflects that the federal determination became final on April 6, 2020 (April 6, 2020 federal assessment).
  5. Based on the documentation that appellant provided during the protest, FTB issued a Notice of Action (NOA) to appellant on May 15, 2023, reducing the additional tax from \$3,227 to \$3,060, plus interest. FTB also included the following statement in the NOA: "We reduced the [NPA] for the above taxable year \$3,060, plus interest, based on the information provided to us." (*Sic.*)
  6. Appellants timely filed this appeal.
  7. Thereafter, FTB discovered that its proposed assessment did not conform to the April 6, 2020 federal assessment with respect to itemized deductions and the corresponding itemized deduction limit. As such, FTB now concedes that its proposed assessment should be reduced to \$812, plus interest. FTB also submits a federal account transcript for the 2015 tax year which reflects that as of July 11, 2023, the IRS had not adjusted the April 6, 2020 federal assessment.

#### 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, FTB concedes that appellant has shown error in its proposed assessment of \$3,060, plus interest. Consequently, FTB adjusted its proposed assessment to properly conform to the April 6, 2020 federal assessment. FTB now asserts that the correct amount of the proposed assessment, which is based on the IRS's latest adjustment, is \$812, plus interest. Therefore, appellant bears the burden of proving this proposed assessment is incorrect.

Appellant alleges that the proposed assessment is erroneous because FTB purportedly conceded in its NOA to a \$3,060 reduction of the amount listed in the NPA (\$3,227, plus interest). (See Factual Finding 5.) As such, appellant argues that FTB's proposed assessment should be revised to \$167, plus interest (\$3,227 - \$3,060). However, the NOA itemized the previously proposed assessment and listed the amount of the "Additional Tax" as \$3,060. Therefore, the NOA clearly reduced that proposed assessment *to* \$3,060, not *by* \$3,060.

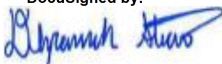
Appellant has not made any argument or provided any evidence to dispute the revised proposed assessment of \$812. Nor has appellant provided any evidence showing that the correct amount of tax due is \$167. Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof with respect to an assessment based on a federal action. (*Appeal of Gorin, supra.*) As such, appellant has not met his burden of proving that FTB's revised proposed assessment of \$812 is erroneous.

HOLDING


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

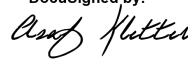
DISPOSITION

FTB’s proposed assessment of tax is reduced to \$812, plus interest, as conceded by FTB on appeal, but is otherwise sustained.

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Lauren Katagihara  
Administrative Law Judge

We concur:

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Veronica I. Long  
Administrative Law Judge

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Asaf Kletter  
Administrative Law Judge

Date Issued: 7/24/2024