

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 20066245
T. LAW AND)
D. LAW)
_____)

OPINION

Representing the Parties:

For Appellants: T. Law
D. Law

For Respondent: Anna Lok, Program Specialist

For Office of Tax Appeals: Nguyen Dang, Attorney

J. LAMBERT, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, T. Law and D. Law (appellants) appeal an action by the Franchise Tax Board (respondent) proposing additional tax of \$25,378.70 and applicable interest for the 2015 tax year.

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

ISSUE

Whether adjustments are warranted to respondent’s proposed deficiency assessment for the 2015 tax year, which is based on a federal action.

FACTUAL FINDINGS

1. During the 2015 tax year, T. Law operated a sole proprietorship providing dental services.
2. Appellants reported gross income of \$277,614 from this business on Schedule C of their joint 2015 federal income tax return.

3. Sometime thereafter, respondent received information from the IRS indicating that it made the following adjustments to appellants' federal income tax return: (1) increased appellants' gross income to account for T. Law's unreported \$5,411 of wage income and \$257,584 of nonemployee compensation, and (2) disallowed \$5,349 of appellants' claimed itemized deductions.¹
4. The IRS adjustment to appellants' reported income was based on the following third-party information returns showing that T. Law received income totaling \$540,609 (\$262,995 over what was reported) for the 2015 tax year: (1) an IRS Form W-2 issued by Visalia Unified School District (School) reporting wages of \$5,411 paid to T. Law; (2) an IRS Form 1099-MISC issued by Visalia Dentistry 4 Kids (Dentistry) reporting nonemployee compensation of \$263,092 paid to T. Law; (3) a second IRS Form 1099-MISC issued by Dentistry reporting nonemployee compensation of \$130,445 paid to T. Law; and (4) an IRS Form 1099-MISC issued by another dental provider, R. T. Canada DDS (RTC DDS), reporting nonemployee compensation of \$141,661 paid to T. Law.
5. Respondent issued to appellants a Notice of Proposed Assessment (NPA) for the 2015 tax year based on the IRS adjustments.
6. Appellants protested the NPA, and respondent issued a Notice of Action affirming its NPA.
7. This timely appeal followed.

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. (*Appeal of Gorin*, 2020-OTA-018P.) It is well established that respondent's deficiency determinations based on a federal adjustment are presumed correct and that taxpayers bear the burden of proving otherwise. (*Ibid.*)

Appellants argue that they did not underreport their income for the 2015 tax year because T. Law received only \$130,445 in nonemployee compensation from Dentistry, and not \$393,537 (\$263,092 + \$130,445) as reported to the IRS. According to appellants, the IRS

¹ The IRS deficiency was assessed on March 12, 2018, and there is no indication that adjustments have been made to this deficiency assessment.

Form 1099- MISC issued by Dentistry for \$130,445 was intended to correct the erroneously reported amount of \$263,092.

Dentistry, however, did not check the “corrected” box on this IRS Form 1099-MISC, nor have appellants provided any evidence, such as a declaration from Dentistry, showing that this form was issued to correct a previously reported payment. Instead, appellants provide T. Law’s pay stubs from Dentistry for the period January 2015, through June 2015, pay stubs from RTC DDS for the period July 2015 through December 2015, and appellants’ 2015 bank account statements, which they contend shows that they did not receive the \$263,092 in income reported by Dentistry.

T. Law’s pay stubs from Dentistry show payments totaling \$130,445.18, and the pay stubs from RTC DDS show payments totaling \$141,661.66, which are the same as the amounts appellants concede T. Law received from these payors. However, a reconciliation of T. Law’s pay stubs to appellants’ bank statements shows that the payments to T. Law of \$7,564 on May 29, 2015, and \$13,572.35 on August 17, 2015, were not deposited into this account. In addition, there are check deposits of \$8,062.31 and \$1,952.55 on June 1, 2015, and \$15,082.35 on August 17, 2015, which are unaccounted for in T. Law’s pay stubs. It is unclear whether these deposits are the payments from Dentistry and RTC DDS from the same period but for different amounts, or additional payments from Dentistry which were not reflected in the pay stubs provided by appellants. The Office of Tax Appeals (OTA) is also unable to verify whether the payment to T. Law on November 30, 2015, for \$9,897.75 was deposited into this account, as appellants did not provide a bank statement covering the latter half of November or the first half of December. Finally, appellants did not identify in the provided bank statements any deposits relating to the \$5,411 T. Law received from School.

Appellants do not offer any explanation for these discrepancies and provide no other evidence in support of their contentions. OTA is therefore unable to determine from the evidence provided by appellants the total deposits into their bank account for the 2015 tax year, whether appellants may have had another bank account, and ultimately, and whether T. Law was not paid the \$263,092 as reported by Dentistry. Furthermore, there is no indication that adjustments have been made to the IRS deficiency assessment on which FTB’s proposed assessment is based.

Accordingly, appellants have not met their burden of proving error in respondent’s proposed deficiency assessment.

HOLDING

No adjustments are warranted to respondent’s proposed deficiency assessment for the 2015 tax year, which is based on a federal action.

DISPOSITION

Respondent’s action is sustained.

DocuSigned by:
Josh Lambert
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Josh Lambert
Administrative Law Judge

We concur:

DocuSigned by:
Kenneth Gast
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Kenneth Gast
Administrative Law Judge

DocuSigned by:
Huy "Mike" Le
A11783ADD49442B...

Huy “Mike” Le
Administrative Law Judge

Date Issued: 6/13/2024