

In the Matter of the Appeal of:) OTA Case No. 221212009
C. RAYNER AND)
A. RAYNER)
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1. For the 2017 tax year, appellants timely filed a joint California Resident Income Tax Return.
2. Appellants used TurboTax software to prepare their return. Appellants' return subtracted wages from their federal adjusted gross income (AGI) on Schedule CA, California Adjustments – Residents (Schedule CA), and line 14 of the return. Based on a tax

liability that excluded the wages, appellants claimed an overpayment of \$12,076.

On April 5, 2018, FTB issued appellants a refund of \$12,076.

3. Thereafter, FTB reviewed appellants' return and determined that the return subtracted from their federal AGI the amount of wages reported on appellant C. Rayner's federal Form W-2, Wage and Tax Statement (W-2). On April 20, 2021, FTB issued appellants a Notice of Proposed Assessment (NPA) that proposed to include the wages appellants had subtracted from their taxable income. The NPA proposed to assess additional tax of \$10,048 plus applicable interest.
4. On May 3, 2021, FTB received appellants' protest of the NPA. The protest included a proposed amended return that amended Schedule CA but continued to subtract the same amount of wages from appellants' federal AGI on line 14 of the return.¹ Appellant C. Rayner wrote that TurboTax software put that wage income "into both Columns A + B when it should have only been put into Column A" and that "[i]t was a mistake from TurboTax software but the taxes were fully paid already."
5. In a letter dated September 14, 2022, FTB replied to appellants that it was treating appellants' amended return as correspondence because it was incomplete. FTB indicated that it considered its prior notice to be correct, and affirmed its disallowance of appellants' subtraction of the wages from their total taxable income. FTB stated that appellants owed additional tax of \$10,048, which was the difference between the tax as calculated including the wages, and the tax excluding the wages.
6. On November 15, 2022, FTB issued to appellants a Notice of Action affirming the NPA.
7. This timely appeal to OTA followed.

DISCUSSION

California residents are generally taxed on their taxable income from all sources. (R&TC, § 17041.) R&TC section 17071 generally incorporates Internal Revenue Code (IRC) section 61, which defines "gross income" as "all income from whatever source derived." FTB's determination is presumed correct, and taxpayers have the burden of proving error. (*Appeal of Chen and Chi*, 2020-OTA-021P.) Unsupported assertions are not sufficient to satisfy taxpayers' burden of proof. (*Ibid.*) In the absence of credible, competent, and relevant evidence showing that FTB's determination is incorrect, FTB's determination must be upheld. (*Ibid.*)

Appellants contend that TurboTax confirmed that their return is correct and they do not

¹ The entries in the proposed amended return are handwritten. Appellant C. Rayner testified that he filled out the proposed amended return with assistance from TurboTax staff over the telephone.

owe any additional tax. Appellant C. Rayner testified that TurboTax staff told him that there was a glitch in the software that caused appellants wages to be reported in both Column A and Column B of Schedule CA, so he followed TurboTax staff's instructions on how to complete an amended return to correct the error. Appellants do not dispute that appellant C. Rayner's wages are taxable.

Here, appellants' return subtracted appellant C. Rayner's wages from their federal AGI, and appellants' calculation of their tax liability excluded that amount of subtracted wages. Therefore, appellants underpaid their tax liability and owe additional tax. Appellants provide no evidence to support their position that they do not owe additional tax. To the extent that the reporting error may have been due to an error in TurboTax software, such error does not establish any basis for why the wages should be excluded from appellants' taxable income. (See also *Appeal of Mauritzson*, 2021-OTA-198P [appellants must show that the error was due to the tax preparation software and not appellants' own error].) Accordingly, appellants have not carried their burden of showing error in FTB's proposed assessment.

HOLDING

Appellants have not shown error in FTB's proposed assessment for the 2017 tax year.


DISPOSITION


FTB's action is sustained.

We concur:

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Asaf Kletter
Administrative Law Judge

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Suzanne B. Brown
Administrative Law Judge

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Tommy Leung
Administrative Law Judge

Date Issued: 12/5/2024