

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 220410279
T. ANDERSON AND)
L. ANDERSON)
_____)

OPINION

Representing the Parties:

For Appellants: T. Anderson and L. Anderson

For Respondent: Marguerite Mosnier, Attorney

For Office of Tax Appeals: Linda Frenklak, Attorney

E. PARKER, Hearing Officer: Pursuant to Revenue and Taxation Code (R&TC) section 19045, T. Anderson and L. Anderson (appellants) appeal actions by respondent Franchise Tax Board (FTB) proposing additional tax of \$120,278 and applicable interest for the 2012 tax year, and additional tax of \$2,439 and applicable interest for the 2014 tax year.

Appellants waived the right to an oral hearing; therefore, the matter was submitted to the Office of Tax Appeals (OTA) on the written record pursuant to California Code of Regulations, title 18, section 30209(a).

ISSUE

Whether appellants have shown error in the proposed assessments based on a final federal determination for the 2012 and 2014 tax years.

FACTUAL FINDINGS

1. On September 8, 2013, appellants filed a timely California Resident Income Tax Return (Form 540) for the 2012 tax year.¹

¹ Appellants reported a federal net operating loss (NOL) carryover to the 2012 tax year of \$472,099 that was added back to California adjusted gross income. Appellants reported zero California NOL carryover to the 2012 tax year.

2. On February 2, 2016, appellants filed an untimely Form 540 for the 2014 tax year.² Appellants reported California alternative minimum tax (AMT) of \$4,060 (and no regular tax). After claiming tax withholdings of \$3,762, appellants reported a balance due of \$298.
3. Due to the late filing of the 2014 tax return, FTB assessed a late filing penalty, plus interest. Appellants paid the penalties and interest in full.
4. On October 9, 2017, FTB received information from the IRS that an audit of appellants' 2012 and 2014 federal returns (Forms 1040) was completed. For the 2012 tax year, the IRS increased appellants' reported federal adjusted gross income (AGI) by \$1,260,593 due to unreported Schedule E income and imposed federal AMT of \$119,398. For the 2014 tax year, the IRS increased appellants' reported federal AGI by \$412,806 due to a disallowed net operating loss (NOL) carryover and imposed federal AMT of \$132,458.
5. On October 2, 2019, based on the federal audit determination, FTB issued a Notice of Proposed Assessment (NPA) for the 2012 tax year, proposing to increase appellants' California taxable income by \$1,260,593 to account for the unreported Schedule E income, resulting in additional tax of \$120,278, plus interest. FTB did not propose California AMT for the 2012 tax year.
6. On October 2, 2019, based on the federal audit determination, FTB also issued an NPA for the 2014 tax year, proposing to increase appellants' California taxable income by \$412,800 due to the disallowed California NOL carryover, and proposed additional tax of \$2,439 and a late filing penalty of \$549.25, plus interest. FTB did not propose California AMT for the 2014 tax year.
7. Appellants timely protested the 2012 and 2014 NPAs, stating that appellants were in the process of reopening the IRS's audits.
8. On April 19, 2022, FTB issued Notices of Action that affirmed the 2012 and 2014 NPAs because the documents provided by appellants during protest failed to show that the IRS reconsidered the assessments for the 2012 and 2014 tax years.
9. This timely appeal followed.
10. On May 22, 2023, while this appeal was pending, the IRS fully withdrew the imposed federal AMT of \$119,398 for the 2012 tax year and the AMT of \$132,458 for the 2014 tax year, and closed its examination of appellants' 2012 and 2014 federal returns. The

² Appellants reported a federal NOL carryover of \$412,806 and a California NOL carryover of \$412,800 to the 2014 tax year. However, on California Form 3805V, which is used to compute and track California NOLs for individuals, appellants failed to identify from which tax year the purported NOL carryover to the 2014 tax year originated.

\$1,260,593 adjustment to federal AGI due to unreported Schedule E income in the 2012 tax year and the disallowed NOL carryover of \$412,806 to the 2014 tax year were included in the final federal determinations.

DISCUSSION

R&TC section 18622(a) provides that a taxpayer shall either concede the accuracy of a federal determination or state how it is erroneous. An assessment based on a federal audit report is presumptively correct and a taxpayer bears the burden of proving that the determination is erroneous. (*Appeal of Gorin*, 2020-OTA-018P.) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof with respect to an assessment based on a federal action. (*Ibid.*)

R&TC section 17071 conforms to Internal Revenue Code (IRC) section 61, which defines "gross income" as all income from whatever source derived. In addition, an NOL is generally defined as the excess of allowed deductions over gross income. (IRC, § 172(c).) As relevant to this appeal, IRC section 172(a) provides that a taxpayer may deduct an amount equal to the NOL carryovers to the tax year at issue (here, the 2014 tax year). California conforms with modifications to IRC section 172 pursuant to R&TC section 17276. A taxpayer claiming an NOL deduction bears the burden of establishing both the existence of the NOL and the amount of any NOL that may be carried over to the tax year involved. (*Schnackel v. Commissioner*, T.C. Memo. 2024-76.)

Here, the IRS increased appellants' 2012 federal taxable income to include unreported Schedule E income of \$1,260,593 and increased appellants' 2014 federal taxable income by disallowing an NOL carryover of \$412,806. Since California conforms to the federal definition of gross income and the general allowance of NOL carryovers, these federal adjustments are applicable to appellants' California tax returns and were included in the proposed assessments for the 2012 and 2014 tax years. (R&TC, §§ 17071, 17276.) On appeal, appellants argue that the proposed assessments for 2012 and 2014 are improper because the IRS's adjustments to their 2012 and 2014 federal returns are not final.

The record shows that appellants submitted an offer in compromise to the IRS for an audit reconsideration for the assessed federal AMT. In support of their request, appellants provided the IRS with revised AMT calculations that included the unreported Schedule E income of \$1,260,593 for the 2012 tax year and the disallowed NOL carryover of \$412,806 for the 2014 tax year. As such, it appears appellants only disputed the AMT calculations, not the underlying adjustments to federal AGI.

During this appeal, the IRS fully withdrew the imposed federal AMT of \$119,398 and \$132,458 for the 2012 and 2014 tax years, respectively, and closed its examination for both years. The record shows that the underlying federal adjustments for the unreported Schedule E income and the disallowed NOL carryover are included in the final federal determinations. Since FTB did not impose California AMT in the proposed assessments for the 2012 and 2014 tax years, the IRS’s subsequent withdrawal of the federal AMT, which is generally a separate calculation from the California AMT, does not impact FTB’s proposed assessments. OTA provided appellants an opportunity to address FTB’s analysis of the impact of the final federal determination that occurred during this appeal but appellants failed to do so. Accordingly, appellants have not shown error in the 2012 and 2014 proposed assessments.

HOLDING

Appellants have not shown error in the proposed assessments based on a final federal determination for the 2012 and 2014 tax years.

DISPOSITION

FTB’s actions are sustained.

DocuSigned by:
Erica Parker
Erica Parker
Hearing Officer

We concur:

Signed by:
Greg Turner
Greg Turner
Administrative Law Judge

DocuSigned by:
Kenny Gast
Kenneth Gast
Administrative Law Judge

Date Issued: 12/3/2024