

In the Matter of the Appeal of:) OTA Case No. 240115050
H. GUNDERSON AND)
D. GUNDERSON (DEC'D))
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1. Appellants jointly filed a timely 2020 California Resident Income Tax Return. Appellants reported total tax of \$85,266; and after applying estimated tax payments, appellants reported tax due of \$39,286. Appellants also self-assessed an underpayment of estimated tax penalty. Appellants paid the total amount due of \$40,003, which was received by FTB on May 1, 2021.
2. Subsequently, in February 2022, appellants jointly filed an amended 2020 California Resident Income Tax Return requesting a refund of \$34,867 based on a net decrease in taxable income. Appellants claimed the changes were prompted because they received a "CP2501 letter from the [Internal Revenue Service (IRS)] which included two

1099 forms that were never received by the taxpayer[s].”¹ The net decrease in claimed taxable income corresponds to a claimed increase in qualified business deductions. FTB treated appellants’ amended 2020 California Resident Income Tax Return as a timely claim for refund.

3. FTB reviewed the amended return. In a letter dated April 14, 2022, FTB informed appellants that FTB was deferring further action on appellants’ 2020 California account until there was a final IRS determination.
4. FTB requested and received copies of appellants’ 2020 IRS Account Transcript (Transcript) on April 11, 2022, October 10, 2022, and August 15, 2023. The first and second versions of appellants’ 2020 Transcript showed that appellants’ amended return filed in February 2022 was being processed. The third version of appellants’ 2020 Transcript showed a second amended return (submitted in October 2022) that was being processed by the IRS; in response to the first amended return the IRS assessed additional tax of \$51,877, imposed an accuracy-related penalty of \$10,375, and interest. As part of that assessment, the IRS also increased appellants’ AGI.
5. In a letter dated October 18, 2023, FTB informed appellants of its position denying their claim for refund because their refund claim with the IRS was denied and requested additional information within 30 days.
6. In a letter dated December 8, 2023, FTB denied appellants’ claim for refund.
7. Appellants timely appealed to OTA in a Request for Appeal dated December 15, 2023.
8. On May 1, 2024, FTB received a fourth version of appellants’ 2020 Transcript. The fourth version of appellants’ 2020 Transcript shows that the IRS did not accept appellants’ amended returns. The assessed additional tax, penalty, interest, and increased AGI noted in the third 2020 Transcript were still present and paid in full.

DISCUSSION

In an action for refund, the taxpayer bears the burden of proof. (*Dicon Fiberoptics, Inc. v. Franchise Tax Bd.* (2012) 53 Cal.4th 1227, 1235; *Appeal of Estate of Gillespie*, 2018-OTA-052P.) The taxpayer must prove not only that respondent’s determination of his tax liability is incorrect but also the correct amount of tax that he owes. (*Appeal of Durley* (82-SBE-154) 1982 WL 11831.) Unsupported assertions are not sufficient to satisfy a taxpayer’s burden of proof. (*Appeal of Magidow* (82-SBE-274) 1982 WL 11930.)

¹ A CP2501 is an IRS notice letter that informs taxpayers that the income or payment information received by the IRS from third parties, such as employers or financial institutions, does not match the information reported on the taxpayers’ return.

Appellants contend that they are entitled to a refund based on their amended 2020 return. Based on the Request for Appeal, appellants assert that the IRS has not completed the processing of their amended return. In support, appellants submit IRS correspondence dated October 20, 2022, and August 4, 2023. Appellants claim that the IRS is behind in processing and once their return is processed, the IRS will issue them a refund. Appellants explain that the amended return(s) was based on a missing 1099 Form from Morgan Stanley.

Here, appellants have not provided supporting documentation to show that they are entitled to a refund. Further, appellants' fourth, and most recent, 2020 Transcript shows that the IRS considered and rejected the adjustments included in appellants' amended returns. The fourth 2020 Transcript continues to show that the IRS assessed additional tax, penalty, and interest. Finally, the fourth 2020 Transcript shows that appellants fully paid those amounts. Thus, appellants' argument that there is merely delay in IRS processing is without merit. In sum, appellants have not met their burden of proof. Accordingly, OTA finds that appellants are not entitled to a refund for the 2020 tax year.

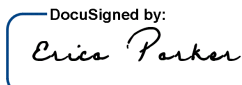
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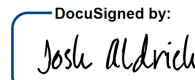
Appellants have not shown entitlement to the claim for refund for the 2020 tax year.

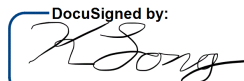
DISPOSITION

FTB's action in denying appellants' claim for refund for the 2020 tax year is sustained.

We concur:

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Erica Parker
Hearing Officer

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Josh Aldrich
Administrative Law Judge

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Keith T. Long
Administrative Law Judge

Date Issued: 2/7/2025