

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:

J. RAMIREZ) OTA Case No. 240215448
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)**OPINION**

Representing the Parties:

For Appellant:

J. Ramirez

For Respondent:

Leoangelo C. Cristobal, Attorney

V. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, J. Ramirez (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$6,032 and applicable interest for the 2018 tax year.

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

ISSUE

Whether appellant has demonstrated error in FTB's proposed assessment, which is based on a federal determination.

FACTUAL FINDINGS

1. Appellant filed his 2018 California income tax return reporting federal and California adjusted gross income (AGI) of \$27,739.
2. Subsequently, FTB received information that the IRS audited appellant's 2018 federal income tax return and increased appellant's federal AGI by \$105,388 to \$133,127. The federal adjustments resulted in the IRS assessing additional tax.
3. Based on the information provided by the IRS, FTB made corresponding adjustments to appellant's 2018 California income tax return. FTB issued appellant a Notice of

- Proposed Assessment (NPA) that proposed to increase appellant's taxable income by \$105,388, resulting in additional tax of \$6,032, plus interest.
4. Appellant protested the NPA, stating that he had an open case with the IRS and was working to resolve the issue.
 5. FTB issued appellant a position letter asking for documentation showing that appellant's federal tax dispute was ongoing or that the IRS had cancelled or reduced its assessment.
 6. Appellant responded with a copy of a document from the U.S. Tax Court which was illegible.
 7. FTB contacted appellant stating that the document was illegible and requested a clear copy. Appellant did not respond, and FTB issued a Notice of Action (NOA) affirming the NPA.
 8. Appellant timely filed this appeal.
 9. On appeal, FTB submits appellant's 2018 IRS Account Transcript (Transcript), dated March 4, 2024, showing an AGI of \$133,127, and indicating that additional tax was assessed on October 25, 2021. The Transcript also shows that a claim was pending on February 3, 2022, and resolved on December 2, 2022, with no reduction in the IRS assessment. FTB also submits appellant's 2018 CP2000, dated March 4, 2024, showing a reported AGI of \$27,739 and revised AGI of \$133,127.

DISCUSSION

A taxpayer shall either concede the accuracy of a federal determination or state how it is erroneous. (R&TC, § 18622(a).) If the IRS makes a change or correction to "any item required to be shown on a federal tax return, including any gross income, deduction, penalty, credit, or tax for any year," the taxpayer must report the federal change to FTB within six months after the date it becomes final. (*Ibid.*) A deficiency assessment based on a federal audit report is presumptively correct, and the 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.*)

Here, the IRS increased appellant's AGI by \$105,388, which FTB followed by increasing appellant's total taxable income by the same amount. To prevail in this appeal, appellant must show that either the IRS reduced or cancelled its assessment, or that regardless of the federal

action, appellant did not receive the additional taxable income. (*Appeal of Dillahunt*, 2024-OTA-024P.)

Appellant states that he wants to know the grounds for FTB's proposed assessment of tax. However, appellant's Transcript and 2018 CP2000 show that FTB adjusted appellant's income by the same amount as the IRS did in October 2021, and FTB's correspondence, including its position letter, make clear the federal determination is the basis of FTB's proposed assessment. FTB's NPA and NOA set out the computation of the proposed addition to tax using the same amounts as the federal determination.

In appellant's protest letter to FTB, he contended that his 2018 federal tax case was ongoing. However, documents provided by FTB on appeal, including appellant's Transcript and 2018 CP2000, both dated March 4, 2024, show the IRS did not reduce or cancel the federal assessment and that the pending claim was resolved on December 2, 2022, with no change in the federal assessment. In addition, appellant has proffered no evidence or argument that he is otherwise entitled to the disallowed expenses and deductions. Thus, appellant has not met his burden of proving error in FTB's proposed assessment, or in the federal determination upon which FTB based its proposed assessment.

Appellant has not demonstrated error in FTB's proposed assessment, which is based on a federal determination.

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