

In the Matter of the Appeal of:) OTA Case No. 231014447
N. MARTINEZ)
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¹ The record contains appellant's 2016 IRS account transcript, provided on April 24, 2024, showing a federal AGI of \$154,589, and appellant's 2016 CP2000, dated December 12, 2023, reflecting \$66,562 of income from the sale of securities.

3. On July 20, 2020, FTB issued appellant a Notice of Proposed Assessment (NPA) proposing additional tax of \$6,187 plus applicable interest. Appellant did not timely protest the NPA and the liability became final.
4. FTB initiated collection action. FTB received payments of \$7,613.05 and \$11.41 on August 26, 2021, and August 31, 2021, respectively, which satisfied appellant's outstanding balance for 2016.
5. Subsequently, appellant filed an amended 2016 tax return reporting a California AGI increase of \$19,712 and additional tax due of \$1,832.
6. Then, FTB requested that appellant provide additional documentation showing that appellant had filed an amended federal tax return with the IRS. Appellant did not timely respond.
7. Later, FTB issued appellant a letter stating that FTB was considering appellant's amended tax return as a claim for refund. The letter stated that FTB was unable to process appellant's amended return without evidence that the IRS canceled or reduced the adjustment to appellant's federal AGI. Appellant did not timely respond.
8. FTB denied appellant's claim for refund.²
9. On September 25, 2023, appellant timely filed this appeal.
10. During this appeal, FTB submitted appellant's 2016 IRS Account Transcript, dated April 24, 2024. Although appellant's 2016 IRS Account Transcript shows that appellant filed amended federal tax returns on December 19, 2018, and March 5, 2019, it does not indicate that the IRS made any additional changes to appellant's federal AGI nor any abatement of the tax, penalty, or interest at the federal level.

DISCUSSION

Taxpayers bear the burden of proving entitlement to their claim for refund, which means they must not only prove that the tax assessment was incorrect but must also produce evidence to establish the proper amount of the tax due, if any. (*Appeal of Jali, LLC*, 2019-OTA-204P.) R&TC section 18622(a) requires a taxpayer to concede the accuracy of federal changes to a taxpayer's income or state where the changes are erroneous. It is well settled that a deficiency assessment based on a federal adjustment is presumptively correct and that the taxpayer bears the burden of proving that FTB's determination is erroneous. (*Appeal of Valenti*, 2021-OTA-093P.) In the absence of credible, competent, and relevant evidence showing that FTB's

² The amount of the denied claim for refund is \$4,355, the difference between the amount of FTB's assessment (\$6,187) and the amount of additional tax due appellant reported on the amended tax return (\$1,832).

determination is incorrect, it must be upheld. (*Ibid.*) The applicable burden of proof is by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(b).) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof with respect to an assessment based on a federal action. (*Appeal of Gorin*, 2020-OTA-018P.)

Here, FTB received federal tax information from the IRS showing that the IRS increased appellant's federal AGI by \$66,562. FTB increased appellant's taxable income by the same amount. Appellant did not provide any evidence showing that the IRS made any additional changes to appellant's federal AGI for 2016. As of April 24, 2024, appellant's federal AGI remains the same. Appellant alleges to have documents to prove the claim of overpayment and states that appellant needs more time to gather documents. However, appellant has not provided any additional documents, or any information about the type of documents appellant is trying to gather and how these documents would prove appellant's claim of overpayment. Moreover, FTB issued appellant the NPA on July 20, 2020, and appellant had more than three years to gather any necessary documentation before filing this appeal with OTA on September 25, 2023.

Although appellant filed amended federal tax returns on December 19, 2018, and March 5, 2019, there is no evidence in the record showing that the IRS accepted or is considering appellant's amended returns, or that the IRS further revised appellant's federal AGI. Therefore, appellant has failed to show that FTB's assessment was erroneous.

HOLDING

Appellant is not entitled to a refund for the 2016 tax year.

DISPOSITION

FTB's action denying appellant's claim for refund is sustained.

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Steven Kim

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Steven Kim

Administrative Law Judge

We concur:

Signed by:

Veronica I. Long

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Veronica I. Long

Administrative Law Judge

Signed by:

Natasha Ralston

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Natasha Ralston

Administrative Law Judge

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