

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)	OTA Case No. 240817143
A. GONZALEZ)	
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OPINION

Representing the Parties:

For Appellant:	A. Gonzalez
For Respondent:	Sarah J. Fassett, Attorney

L. KATAGIHARA, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, A. Gonzalez (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant's claim for refund of \$4,865 for the 2018 tax year.

Appellant elected to have this appeal determined pursuant to the procedures of the Small Case Program. Those procedures require the assignment of a single panel member. (Cal. Code Regs., tit. 18, § 30209.05(b).)

Appellant 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 appellant has shown error in FTB's denial of appellant's claim for refund of additional tax that FTB assessed based on a final federal determination.

FACTUAL FINDINGS

1. Appellant received \$129,805 in income that she did not report on her federal or state income tax returns for the 2018 tax year.
2. FTB received information reflecting that the IRS increased appellant's federal adjusted gross income (AGI) to account for the additional income. The IRS's adjustment became a final federal determination.

3. Based on this federal determination, FTB made a corresponding change to appellant's California AGI and issued to appellant a Notice of Proposed Assessment (NPA) for additional tax of \$4,865 and applicable interest for the 2018 tax year.
4. Appellant did not timely protest the NPA, so the liability became final.
5. FTB sent multiple notices to appellant demanding payment and warning appellant that if she did not remit payment, FTB could pursue collection action and impose a collection cost recovery fee.
6. Having received no response or payment from appellant, FTB imposed the collection cost recovery fee and initiated collection action. Appellant's liability for the 2018 tax year was fully paid by way of FTB's collection action (less \$22.73, which FTB wrote off).
7. Appellant submitted an amended California return for the 2018 tax year, wherein appellant continued to underreport her federal and California AGI.
8. FTB treated appellant's amended return as a claim for refund and requested appellant provide documentation showing that the IRS reduced appellant's federal AGI.
9. Appellant did not respond to FTB's request, so FTB denied appellant's claim for refund.
10. This timely appeal followed.
11. As of September 20, 2024, the IRS had not made any further adjustments to appellant's federal AGI for the 2018 tax year.

DISCUSSION

As a general rule, 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 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 information that the IRS increased appellant's 2018 federal AGI due to unreported income. FTB therefore made conforming adjustments to appellant's 2018

California income, which resulted in \$4,865 of additional tax, plus applicable interest.¹ Because FTB's assessment was based on federal adjustments, it is presumed correct, and appellant has the burden to show that FTB's assessment was erroneous.


Appellant does not argue that FTB erroneously based its deficiency assessment on a federal adjustment. Instead, appellant asserts that she requested the IRS send her information regarding her balance and account transcript but has not received such information. FTB, on the other hand, provided evidence that as of September 20, 2024, the IRS had not made any further adjustments to appellant's federal AGI for the 2018 tax year. Appellant has not provided any evidence to OTA during the duration of this appeal showing that the IRS has cancelled or reduced its assessment, or that FTB's assessment was otherwise incorrect. As unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof with respect to an assessment based on a federal action, appellant has not shown error in FTB's assessment.

HOLDING

Appellant has not shown error in FTB's denial of appellant's claim for refund of additional tax that FTB assessed based on a final federal determination.

DISPOSITION

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

Signed by:

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Lauren Katagihara
Administrative Law Judge

Date Issued: 3/28/2025

¹ Pursuant to R&TC section 17071, California conforms to section 61 of the Internal Revenue Code relating to gross income, except as otherwise provided.