

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)	OTA Case No. 231014572
T. RISBERG)	
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OPINION

Representing the Parties:

For Appellant:	T. Risberg
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For Respondent:	Tristen Thalhuber, Attorney
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For Office of Tax Appeals:	William Stafford, Attorney
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T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, T. Risberg (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant's claim for refund of \$1,088 for the 2016 taxable year.

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

ISSUE

Whether appellant has shown that respondent's action, which is based on an IRS audit, was incorrect.

FACTUAL FINDINGS

- Appellant's 2016 federal income tax return (Form 1040) was examined by the IRS, resulting in an increase to their adjusted gross income (AGI) of over \$48,000. Respondent received information from the IRS about this adjustment and made comparable AGI adjustments to appellant's 2016 California personal income tax return (Form 540).
- In January 2020, respondent issued a Notice of Proposed Assessment (NPA) to appellant reflecting the changes to the 2016 Form 540. When appellant did not respond to the NPA, it became final and respondent sent several notices to appellant regarding collection action.

3. In November 2021, instead of making any payment, appellant provided a copy of the 2016 Form 540 with the originally reported AGI and tax due. Respondent consequently commenced collection activities in 2023.
4. In 2023, appellant's IRS transcript showed no further adjustments to appellant's account since the IRS determination increasing their AGI.
5. Respondent's collection activities in March 2023 satisfied appellant's 2016 California account balance. In correspondence dated June 27, 2023, respondent informed appellant that the copy of their 2016 Form 540 submitted in November 2021 would be treated as a claim for refund because its collection activities satisfied appellant's 2016 account balance. Respondent also provided appellant with 30 days to submit additional information regarding the IRS adjustments to appellant's 2016 Form 1040.
6. After appellant did not reply to respondent's correspondence, respondent denied the claim for refund.

DISCUSSION

When the IRS makes changes to a taxpayer's federal tax return, the taxpayer must report those changes to respondent, and concede the accuracy of the federal changes or state why the changes are erroneous. (R&TC, § 18622(a).) A deficiency 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 by taxpayers are insufficient to satisfy their burden of proof with respect to a proposed assessment based on a federal action. (*Ibid.*)

Appellant argues that they do not understand why the refund claim was denied because they never received respondent's correspondence dated June 27, 2023, and that they filed for bankruptcy on August 2, 2023. However, respondent's NPA explained the amount of tax due, and its brief on appeal provides the June 27, 2023 correspondence and explains why it denied appellant's refund claim. Appellant had the opportunity to provide a reply brief showing error in respondent's determination but did not submit any reply. OTA has no authority to resolve any grievances that appellant may have against respondent aside from determining the correct amount of appellant's California income tax liability, if any. (*Appeals of Dauberger, et al.* (82-SBE-082) 1982 WL 11759.) Since appellant did not demonstrate how respondent's action is wrong, appellant has not met their burden of showing error in respondent's NPA, which is based on a federal AGI adjustment.

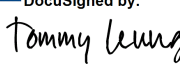
With respect to appellant's Chapter 7 bankruptcy filing on August 2, 2023, it is noted that appellant's 2016 California tax year account was fully assessed and paid prior to the bankruptcy filing. Moreover, the bankruptcy filing has no bearing on whether appellant has shown error in respondent's denial of appellant's claim for refund.¹

HOLDING

Appellant has not shown that respondent's action, which is based on an IRS audit, was wrong.

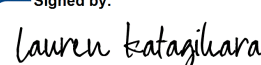
DISPOSITION

Respondent's action is sustained.

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Tommy Leung
Administrative Law Judge

We concur:

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Lauren Katagihara
Administrative Law Judge

DocuSigned by:

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Erica Parker
Hearing Officer

Date Issued: 4/10/2025

¹ In any event, OTA has no jurisdiction to determine whether a liability has been or should have been discharged in bankruptcy. (Cal. Code of Regs, tit. 18, § 30104(k).)