

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
D. HODGES) OTA Case No. 230814039
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OPINION

Representing the Parties:

For Appellant: D. Hodges
For Respondent: Tristen Thalhuber, Attorney
Cynthia D. Kent, Attorney Supervisor

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, D. Hodges (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$4,190¹ and applicable interest for the 2017 taxable 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).)

Office of Tax Appeals (OTA) Administrative Law Judge Teresa A. Stanley held a virtual oral hearing for this matter on March 20, 2025. At the conclusion of the oral hearing, the record was closed, and this matter was submitted for an Opinion pursuant to California Code of Regulations, title 18, section 30209(b).

ISSUE²

Has appellant established error in FTB’s proposed assessment of tax for 2017?

¹ This amount consists of unpaid tax of \$1,052 reported on appellant’s tax return and an erroneous refund of \$3,138. The erroneous refund included interest of \$10.78.

² At the oral hearing, OTA asked appellant whether he disputed the tax of \$1,052 reported on his tax return, which remains unpaid. Appellant stated his main issue is with the erroneous refund and whether he ever received the refund check.

FACTUAL FINDINGS

1. On April 15, 2019, appellant filed a 2017 California Resident Income Tax Return reporting a tax balance due of \$1,052, which resulted from total tax of \$4,190 less withholdings of \$3,138. Appellant did not pay the tax due.
2. FTB processed appellant's tax return and incorrectly entered total tax of \$0 instead of total tax of \$4,190. FTB, therefore, issued a check dated June 10, 2019, refunding appellant's withholdings of \$3,138 plus interest.
3. The refund check for \$3,148.76 was signed by appellant and deposited into a JP Morgan Chase bank account on June 17, 2019. Appellant denies receiving or signing this check; however, the signature on the back side of the check appears to match appellant's signature on his 2017 tax return and on the Request for Appeal form.
4. Appellant's JP Morgan Chase bank account shows a deposit of \$2,948.76 on June 17, 2019, which is exactly \$200 less than the amount of the refund check.
5. On June 3, 2022, FTB sent appellant a letter notifying him that FTB had erroneously sent a refund for taxable year 2017, and it requested that appellant return the erroneous refund of \$3,148.76 plus the additional tax due of \$1,052 reported on the 2017 tax return.
6. Appellant disputed that he received the refund, and FTB issued a Notice of Proposed Assessment (NPA) on July 28, 2022, for total tax of \$4,190, plus interest.
7. Appellant continued to dispute that he received the refund, and FTB issued a Notice of Action affirming the NPA.
8. Appellant filed this timely appeal.

DISCUSSION

FTB's determination is presumed correct, and a taxpayer has the burden of proving it to be wrong. (*Appeal of Davis and Hunter-Davis*, 2020-OTA-182P.) In the absence of credible, competent, and relevant evidence showing an error in FTB's determination, FTB's determination will be upheld. (*Ibid.*) The burden of proof requires proof by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(b).) When FTB makes a refund that it determines to be erroneous, FTB may assess and collect the amount erroneously refunded if FTB either sends a notice and demand within two years of the refund or within four years of the date the taxpayer files a return, whichever is later. (R&TC, § 19368(a).)

Appellant filed his 2017 tax return on April 15, 2019, and FTB erroneously refunded appellant's withholdings in a check dated June 10, 2019. FTB issued the NPA for return of the

erroneously refunded amount plus the tax shown on appellant's return on July 28, 2022, which was within four years of the date appellant filed the tax return. FTB's notice and demand was therefore timely issued. (See R&TC, §§ 19368(a), 19057(a).)

Appellant asserts that FTB erred in its proposed assessment because he never received or deposited the refund check sent to him at a Sunnyvale, California address three months after he moved from that residence. Appellant contends that when he received the June 3, 2022 letter from FTB, he contacted FTB and was told that the check had not been cashed. According to appellant, FTB directed him to request a reissuance of the check so that it could then be canceled, which appellant did. Appellant testified that he contacted his bank to ask for the payor of the June 17, 2019 check, and the bank informed him it was from the IRS, not FTB.

The evidence in OTA's record contradicts appellant's main assertion that he never received the refund check of \$3,148.76. Appellant provided a bank statement that covered June 17, 2019, showing a deposit of \$2,948.76 on that date. The endorsement on the check shows that appellant signed it³ and deposited it in a JP Morgan Chase bank account on June 17, 2019. At the oral hearing, OTA asked appellant if he might have deposited the check and taken back \$200 in cash. Appellant responded that the total amount of the deposit would still show on his bank statement even if he took cash back, and that his bank told him the check was from the IRS.

Appellant has not provided evidence to refute that the check he deposited on June 17, 2019, was from FTB. It is far too coincidental that appellant deposited the exact same amount of the erroneous refund, less \$200, on the same date that the FTB check was signed, and on the same date the endorsed check was deposited. Thus, it is more likely than not that appellant received and deposited the erroneous refund check. Appellant is therefore liable for repayment of the erroneous refund and the tax of \$1,052 that appellant never paid.

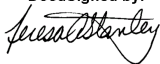
³ Appellant initially testified at the oral hearing that he did not sign the check. OTA notes that the endorsement signature on the back of the check is very similar to appellant's signature on his 2017 tax return and on his Request for Appeal form.

HOLDING

Appellant has not established error in FTB's proposed assessment of tax for 2017.

DISPOSITION

OTA sustains FTB's action.

DocuSigned by:

Teresa A. Stanley
Administrative Law Judge

Date Issued: 5/14/2025