

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 240716646
V. ALVILLAR)
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OPINION

Representing the Parties:

For Appellant: V. Alvillar
For Respondent: John Ly, Graduate Student Assistant

S. RIDENOUR, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, V. Alvillar (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$2,733 for the 2018 tax year.

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 claim for refund denial for the 2018 tax year.

FACTUAL FINDINGS

1. Appellant timely filed her 2018 California tax return using the single filing status and reporting federal adjusted gross income (AGI) of \$141,592. Appellant claimed an overpayment of \$5,570, which FTB refunded.
2. Subsequently, the IRS audited appellant’s 2018 federal tax return, increasing appellant’s federal AGI by \$54,600, from \$141,592 to \$196,192, to account for unreported pension/annuities income. The IRS assessed additional tax and imposed a penalty and its determination went final on August 2, 2021. Appellant did not notify FTB of the federal adjustments.

3. The IRS notified FTB of the federal adjustments and on March 23, 2023, FTB issued appellant a Notice of Proposed Assessment (NPA), to conform with the changes the IRS made to appellant's federal tax return. The NPA proposed additional tax of \$5,041 and applicable interest.
4. Appellant did not protest the NPA, and the proposed assessment became a final liability.
5. On August 23, 2023, appellant filed an amended 2018 California tax return using the head of household filing status and reporting federal AGI of \$196,192. Appellant claimed an overpayment of \$3,262.
6. On October 31, 2023, FTB transferred \$6,046.51 from appellant's 2022 tax year account towards her 2018 tax year, satisfying the liability.
7. Subsequently, FTB processed appellant's amended return and issued appellant a letter dated April 26, 2024, notifying appellant that it was treating her 2018 amended tax return as a claim for refund since the 2018 liability was paid in full. FTB informed appellant that it could not process appellant's amended 2018 tax return as filed since the head of household filing status did not match information FTB received from the IRS indicating that appellant used the filing status of single.¹
8. On June 3, 2024, FTB issued appellant a letter notifying her that it was denying her claim for refund.²
9. This timely appeal followed.
10. On appeal, appellant provides an amended 2018 federal tax return, signed June 14, 2024, using the head of household filing status, and FTB provides appellant's 2018 federal transcript, dated August 7, 2024.

DISCUSSION

When the IRS changes or corrects a taxpayer's federal tax return, the taxpayer must either concede the accuracy of the federal determination or state how the determination is 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.) The applicable burden of proof is by a

¹ FTB also stated it could not process the return since the reported taxable income did not match the information FTB received from the IRS.

² While appellant claimed an overpayment of \$3,279 on her amended return, it appears that she did not include the previous credit of \$546 in withholding credits she received when she filed her original tax return. Therefore, FTB denied the claim for refund in the amount of \$2,733 (\$3,279-\$546).

preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(b).) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof. (*Appeal of Gorin, supra.*)

Appellant contends that she filed an amended 2018 federal tax return using the head of household status and that the return was "indeed approved." In support of her contention, appellant refers to the amended 2018 federal tax return, signed June 14, 2024, using the head of household filing status.

R&TC section 18521 generally requires a taxpayer to use the same filing status on their California income tax return as that on their federal income tax return filed for the same taxable year.³ Appellant contends that the IRS approved her amended 2018 federal tax return using the head of household status. However, OTA notes that the return is signed June 14, 2024, and as of August 7, 2024 (the date the IRS provided FTB with the federal account transcript), there is no entry on appellant's 2018 federal account transcript indicating the IRS accepted the amended federal return. Despite opportunities to provide documentation demonstrating that the IRS accepted her amended federal return after August 7, 2024, appellant provided no such documentation. OTA finds that appellant has not substantiated that the IRS accepted her 2018 filing status as head of household. Moreover, FTB is not bound to adopt a conclusion reached by the IRS which it believes to be erroneous. (*Appeal of First Solar, Inc., 2023-OTA-532P.*) Thus, even if the IRS accepted appellant's head of household filing status for the 2018 tax year, FTB is not bound to also accept the filing status.⁴ OTA finds that appellant has not met her burden to show error in FTB's proposed assessment.

³ R&TC section 18521 provides exceptions not applicable here, such as when a spouse or domestic partner was a nonresident for any portion of the taxable year. (R&TC, § 18521(a)(3).)

⁴ FTB can conduct an independent investigation, such as verifying whether a taxpayer meets the requirements for the head of household filing status. (*Appeal of King Solarman, Inc., 2024-OTA-203P*; see R&TC, § 17042.)

HOLDING

Appellant has not shown error in FTB’s claim for refund denial for the 2018 tax year.

DISPOSITION

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

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Sheriene Anne Ridenour

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Sheriene Anne Ridenour
Administrative Law Judge

We concur:

Signed by:

Lauren Katagihara

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Lauren Katagihara
Administrative Law Judge

Signed by:

Seth Elsom

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Seth Elsom
Hearing Officer

Date Issued: 4/25/2025