

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: )  
W. ELLITHORPE, JR. AND ) OTA Case No. 240516242  
S. ELLITHORPE )  
\_\_\_\_\_ )

**OPINION**

Representing the Parties:

For Appellants: W. Ellithorpe Jr.

For Respondent: Leoangelo C. Cristobal, Attorney

K. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, W. Ellithorpe, Jr. and S. Ellithorpe (appellants) appeal an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$2,268 and applicable interest<sup>1</sup> for the 2019 tax year.

Appellants 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 appellants have shown error in FTB’s proposed assessment, which is based on a final federal determination.

**FACTUAL FINDINGS**

1. Appellants timely filed a joint California Resident Income Tax Return for the 2019 tax year. On the return, appellants reported total tax of \$10,343. After applying withholding credits, appellants reported tax due of \$2,756 and self-assessed a penalty for the underpayment of estimated tax of \$67, which appellants paid on April 15, 2020.

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<sup>1</sup> On appeal, appellants have not raised any argument regarding the imposition of interest. Therefore, OTA does not consider interest to be at issue and will not discuss it further.

2. FTB received information that the IRS increased appellant's federal adjusted gross income by \$24,389 for unreported securities income. FTB made corresponding adjustments, which increased appellants' California taxable income and issued a Notice of Proposed Assessment (NPA) proposing to assess additional tax of \$2,268, plus interest.
3. Appellants protested the NPA, arguing that they inherited the securities and "should only be responsible for the step-up rule." With the protest, appellants provided a death certificate from the State of Arizona certifying the death of H. George, from whom appellants argued that they received the inheritance. Appellants also provided Forms 1099-B, Proceeds from Broker and Barter Exchange Transactions, which report appellants' sales of securities during the 2019 tax year. The Forms 1099-B do not include any cost or basis information.
4. By letter dated March 19, 2024, FTB acknowledged appellants' protest and requested evidence that the IRS had changed its determination. Appellants responded that they would amend their federal return but did not provide evidence that the IRS changed its determination.
5. On May 1, 2024, FTB issued a Notice of Action affirming the NPA.
6. On June 12, 2024, FTB obtained a copy of appellants' 2019 federal Wage and Income Transcript (Transcript).
7. This timely appeal followed.

#### DISCUSSION

If the IRS changes or corrects an item reported by a taxpayer on their federal income tax return, the taxpayer shall report the change or correction to FTB within six months of the final federal determination, either conceding the accuracy of that determination, or stating where the determination is erroneous. (R&TC, § 18622(a).) It is well settled that a deficiency assessment based on federal adjustments is presumed correct, and a taxpayer has 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 sale or redemption of securities generates taxable income to the extent that the proceeds exceed the adjusted basis of the securities. (Internal Revenue Code (IRC), §§ 1001, 1012, 1016; R&TC, § 18031.) FTB determined that appellants failed to report income from the sale of securities based on the final federal determination. The IRS did not cancel or reduce the

federal assessment according to appellants' Transcript dated June 12, 2024. Therefore, appellants must demonstrate error in either the federal adjustment or FTB's proposed assessment.

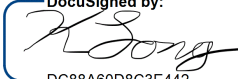
On appeal, appellants assert that they inherited the securities in question and are entitled to additional basis. However, appellants have not provided any evidence to support that they are entitled to additional basis. For example, appellants have not provided any evidence to show that the securities were inherited from H. George. Appellants also have not provided any statements indicating the price paid for the securities. Instead, the available evidence, appellants' Form 1099-B, reflects that appellants had zero cost basis in the securities. The information reported on the Forms 1099-B is consistent with appellants' Transcript. Therefore, appellants have not shown error in either the federal adjustment or FTB's proposed assessment. As appellants had zero cost basis, all the proceeds from the securities' redemption are taxable income.

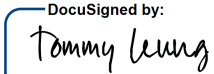
HOLDING

Appellants have not shown error in FTB's proposed Assessment, which is based on a final federal determination.

DISPOSITION

FTB's action is sustained.

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Keith T. Long  
Administrative Law Judge

We concur:  
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Tommy Leung  
Administrative Law Judge

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Josh Aldrich  
Administrative Law Judge

Date Issued: 4/29/2025