OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **L. TOLENTINO**	OTA Case No. 240716920

OPINION

Representing the Parties:

For Appellant: L. Tolentino

For Respondent: John Ly, Graduate Legal Assistant

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, L. Tolentino (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of $4,334 and applicable interest for taxable year 2019.

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

Has appellant established error in FTB's proposed assessment, which is based on a final federal determination?

FACTUAL FINDINGS

1. Appellant filed a timely California Resident Income Tax Return for taxable year 2019, reporting total tax of $1,558, and after applying withholding credits of $2,066, claimed a refund of $508. FTB accepted the return as filed and issued the refund to appellant.
2. Subsequently, FTB received information that the IRS increased appellant's federal AGI by $59,413. Specifically, the IRS information showed unreported pensions/annuities of $56,226 ($49,051 from BNY Mellon and $7,175 from Capital Bank and Trust), and unreported income of $3,712 from Xerox Corporation (Xerox). After adding the unreported income, the IRS increased appellant's self-employment tax deduction by $525.

3. Based on the information provided by the IRS, FTB made corresponding adjustments to appellant's 2018 California income tax return. FTB issued appellant a Notice of Proposed Assessment (NPA) that increased appellant's California taxable income by $59,413 ($56,226 + $3,712 - $525) and proposed additional tax of $4,334 plus applicable interest.
4. Appellant protested the NPA, and FTB issued a Notice of Action affirming its NPA.
5. Appellant filed this timely appeal.

DISCUSSION

R&TC section 18622(a) provides that a taxpayer must either concede the accuracy of a final federal determination or state why it is erroneous. It is well settled that a deficiency assessment based on federal adjustments to income is presumptively correct and that the taxpayer bears the burden of proving that the determination is erroneous. (*Appeal of Gorin*, 2020-OTA-018P.) In the absence of credible evidence showing that FTB's determination is incorrect, it must be upheld. (*Appeal of Valenti*, 2021-OTA-093P.)

As FTB's proposed assessment based on IRS adjustments is presumed correct, the burden of proof is on appellant to show error in FTB's adjustments. On appeal, appellant argues that the additional income is attributable to Pure Therapy LLC,[1] a business that appellant intended to start but never did. Appellant asserts that he never did any transactions or made any money from the business.

The unreported income, however, is due to pension or annuity distributions and some Xerox income received by appellant during 2019. The IRS information does not list Pure Therapy LLC as a source of income. Appellant has not provided argument or evidence showing that the pension or annuity distributions and other income received from Xerox are nontaxable. Therefore, appellant has not met his burden to show error in FTB's proposed assessment.

[1] Entities registered to do business in California, such as limited liability companies, must file their own tax returns and pay an annual tax for the privilege of doing business in California until a certificate of cancellation is filed with the Secretary of State. (R&TC, § 17948; see also R&TC, § 18633.5.)

HOLDING

Appellant has not established error in FTB’s proposed assessment, which is based on a final federal determination.

DISPOSITION

OTA sustains FTB’s action.

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Teresa A. Stanley
Administrative Law Judge

We concur:

Signed by:
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Josh Lambert
Administrative Law Judge

DocuSigned by:
DC88A60D8C3E442...
Keith T. Long
Administrative Law Judge

Date Issued: 6/18/2025