OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **M. ABBATE**	)	OTA Case No. 240716616

OPINION

Representing the Parties:

For Appellant: M. Abbate

For Respondent: Sarah J. Fassett, Attorney

J. LAMBERT, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, M. Abbate (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of $6,349, plus interest, 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 established error in FTB's proposed assessment of additional tax, which is based on a federal determination.

FACTUAL FINDINGS

1. Appellant and his spouse (the couple) timely filed a 2018 California income tax return, using a filing status of married filing jointly.[1]
2. The IRS adjusted the couple's federal income tax return, increasing appellant's federal adjusted gross income for unreported taxable dividends of $165 and unreported pensions/annuities of $11,205 and $44,845. The pensions/annuities were from distributions from an individual retirement account (IRA) totaling $56,050 ($11,205 + $44,845). The couple did not report the federal changes to FTB.

[1] Appellant's spouse did not sign the appeal, so OTA addresses only M. Abbate as appellant.

3. The couple also did not report the IRA distributions or dividend income on their California return. FTB received information from the IRS about the federal adjustments. Based on the federal adjustments, FTB issued to the couple a Notice of Proposed Assessment (NPA) which increased their taxable income by $56,215 ($165 + $11,205 + $44,845), and proposed additional tax of $6,349, plus interest.[2]
4. Appellant protested the NPA, explaining that a portion of the IRA distribution income is not taxable because some of the amounts were originally contributed to the IRA when he was a resident of another state. FTB requested that appellant provide evidence in support of his position, including documentation from financial institutions showing the IRA contributions, tax returns from other states showing the IRA contributions, and a computation of his California IRA basis.
5. Appellant provided: (1) a 2013 federal income tax return showing IRA rollovers of $8,895 and $25,744; (2) a 2013 Wisconsin income tax return;[3] (3) a 2013 Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc., from Charles Schwab Bank Trustee showing a distribution and rollover of $8,894.62;[4] (4) a Wells Fargo statement for 2013 showing a deposit of $8,888.68 to a traditional IRA, and indicating zero contributions; and (5) a Wells Fargo statement for 2017 showing a "rollover" of $22,069.25. Appellant asserted that his total federal basis in the IRA was $44,845.48 and that this amount should be bifurcated, with a basis in Wisconsin of $15,251.17 and a basis in California of $29,594.31.
6. FTB affirmed the NPA in a Notice of Action.
7. This timely appeal followed.

DISCUSSION

R&TC section 18622(a) provides that a taxpayer is required to report to FTB a federal determination within six months after it becomes final and shall either concede the accuracy of the federal determination or state wherein it is erroneous. It is well settled that a deficiency assessment based on a federal adjustment to income is presumed to be correct and the taxpayer bears the burden of proving that FTB's determination is erroneous. (*Appeal of Valenti*,

[2] Appellant does not dispute the dividend income and, therefore, it will not be discussed.

[3] Appellant's 2013 Wisconsin state income tax return states that, for 2013, he was a resident of Wisconsin from January 1, 2013, to June 30, 2013, and a California resident from July 1, 2013, until the end of the year.

[4] The Form 1099-R indicates a distribution code G, which means a rollover to an IRA. (www.irs.gov/pub/irs-prior/i1099r--2013.pdf)

2021-OTA-093P.) In the absence of credible, competent, and relevant evidence showing that FTB's determination is incorrect, it must be upheld. (*Ibid*.)

R&TC section 17041(a) imposes a tax "upon the entire taxable income of every resident of this state." R&TC section 17071 incorporates Internal Revenue Code (IRC) section 61, which defines "gross income" as "all income from whatever source derived," including annuity and pension income. (IRC, § 61(a)(8), (10).) Generally, a distribution from an IRA is included in gross income for the year of distribution, as provided under IRC section 72. (IRC, §§ 402(a), 408(d).) Distributions from an IRA are taxable to the extent that they exceed the taxpayer's basis in the IRA. (IRC, § 72(b).) A taxpayer has a zero basis in an IRA, unless the taxpayer has made nondeductible contributions to the IRA.[5] (IRC, § 408(d)(1).) California conforms, with modifications, to IRC sections 72, 402(a), and 408(d). (R&TC, §§ 17085(c)(1), 17501, 17507(b).)

Appellant contends that some of the income from the IRA distribution is not taxable in California because a portion of the contributions to the IRA were completed while he was a resident of Wisconsin. However, appellant has not pointed to a particular statute or legal authority in support of his arguments. And as noted above, distributions from an IRA are taxable by California if the taxpayer was a California resident at the time the income was distributed.

OTA is not aware of any legal authority allowing an IRA basis adjustment based on contributions made while the taxpayer was a nonresident of California. As stated in *Appeal of Watts* (97-SBE-011) 1997 WL 466859, there is "no currently operative statute or regulation which requires [FTB] to make the basis allowance for contributions to an IRA made while a non-resident."[6] Furthermore, the record does not indicate any nondeductible contributions were made to the IRA. Appellant provided documentation, including a Form 1099-R, a 2013

[5] To avoid double taxation, IRC section 72 allows a portion of a distribution to be excluded from gross income, to the extent such portion represents the distributee's "investment in the contract." (IRC, § 72; *Appeal of Watts* (97-SBE-011) 1997 WL 466859.) The investment in the contract is the amount of contributions made to the IRA which were not deducted by the taxpayer in the years the contributions were made, and hence were already included in the taxpayer's taxable income in the year the contribution was made. (*Appeal of Watts*, *supra*.) This amount is referred to as the taxpayer's "basis" in his or her IRA. (*Ibid*.)

[6] Former R&TC section 17530(d)(1) allowed taxpayers to treat as basis the amount of "annual contributions" to an IRA (up to a maximum amount of $2,000 per year) and the earnings thereon, which were made while the taxpayers were residents of another state. This adjustment served to prevent the potential for double taxation should the state of prior residence seek to tax the distribution. However, R&TC section 17530(d)(1) was repealed effective January 1, 1983. Therefore, R&TC section 17530(d)(1) is not applicable to this appeal. OTA notes that the record does not show that the tax on the distribution at issue results in appellant being taxed twice on the same income in both California and Wisconsin.

Wisconsin tax return,[7] and Wells Fargo statements for 2013 and 2017. However, those documents show rollovers to the IRA, which are not contributions. As such, appellant does not provide evidence of nondeductible contributions to the IRA.

The IRS treated the total distributions ($56,215) as taxable, and did not reduce these distribution amounts by appellant's asserted basis of $44,845.48. Appellant's federal account transcript shows that the federal adjustment on which FTB based its assessment has not been revised or canceled. A taxpayer's basis in his or her IRA for California purposes may be different from his or her federal basis.[8] (*Appeal of Watts*, *supra*.) However, appellant has not established that the IRA basis for federal and California purposes should be different, such that an adjustment should be made to the California determination. Accordingly, appellant has not shown that any adjustment should be made to FTB's proposed assessment of tax.

[7] Appellant's 2013 Wisconsin tax return shows a federal IRA deduction of $410 and corresponding Wisconsin deduction. The reason for the deduction is unclear. OTA notes that Wisconsin conforms to federal IRA contribution deductions, but modifies them by prorating the deduction based on the ratio of Wisconsin-source wages/earnings to total wages/earnings. (Wis. Stat. § 71.01(1), 71.05(6)(a)12.)

[8] For instance, between 1982 and 1986, California allowed a smaller tax deduction for IRA contributions than the federal government, which potentially resulted in a portion of a contribution being taxed by California in the year of the contribution, but then treated as a return of basis when withdrawn from the IRA, preventing double taxation. (See R&TC, § 17507(b)(1); *Appeal of Watts*, *supra*.) However, the evidence does not show that R&TC section 17507(b)(1) is applicable.

HOLDING

Appellant has not established error in FTB's proposed assessment of additional tax, which is based on a federal determination.

DISPOSITION

FTB's action is sustained.

Signed by:
Josh Lambert
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Josh Lambert
Administrative Law Judge

We concur:

DocuSigned by:
Steven Kim
5DD7EE644397430...
Steven Kim
Administrative Law Judge

DocuSigned by:
Erica Parker
6651E0AAC34B4F6...
Erica Parker
Hearing Officer

Date Issued: 6/18/2025