

In the Matter of the Appeal of:) OTA Case No. 240716810
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N. TOY AND)
C. TOY)
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1. Appellants filed a timely California resident income tax return for the 2017 tax year. On the return, appellants reported total tax of \$10,803, applied withholding credits of \$13,498, and claimed an overpayment of \$2,695. FTB accepted appellants' return as filed and issued the refund on July 30, 2018.
2. Thereafter, FTB received information that the IRS had made adjustments to appellants' federal income tax return, which increased appellant's federal adjusted gross income (AGI) by \$42,062. The federal adjustment results from disallowed deductions claimed on appellants' Schedule C, Profit or Loss From Business.

3. FTB made corresponding changes to appellants' return and increased appellants' California taxable income by \$42,062. On November 29, 2022, FTB issued appellants a Notice of Proposed Assessment (NPA), reflecting the adjustment and proposing additional tax of \$3,912 plus applicable interest.
4. Appellants protested the NPA.
5. After additional correspondence, FTB issued a Notice of Action affirming the NPA.
6. 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 the taxpayers have 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.*)

Here, FTB issued its NPA based on a federal determination and it is presumptively correct. (*Appeal of Gorin*, 2020-OTA-018P.) FTB also provided a copy of appellants' federal account transcript, which shows that the IRS examined appellants' federal return, made an assessment of tax, and made no further adjustments as of August 20, 2024. On appeal, appellants assert that the IRS is reviewing the federal audit. However, appellants have not provided any evidence to show that there is an ongoing federal appeal or that the IRS decreased its assessment. Appellants also have not provided any argument or evidence to show that they are entitled to the disallowed deductions. Appellants' unsupported assertions are insufficient to meet their burden of proof. (*Ibid.*) Accordingly, OTA finds that no reductions to FTB's proposed assessment are warranted.

HOLDINGS

Appellants have not shown error in the proposed assessment, which is based on a final federal determination.

DISPOSITION

FTB's action affirming the NPA is sustained.

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Keith T. Long
Administrative Law Judge

We concur:

Signed by:

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Josh Lambert
Administrative Law Judge

Signed by:

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Kim Wilson
Administrative Law Judge

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