

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)	OTA Case No. 240716945
S. BAUMANN)	
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)	
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OPINION

Representing the Parties:

For Appellant: S. Baumann

For Respondent: Tristen Thalhuber, Attorney

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, S. Baumann (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$14,907 and applicable interest for the 2018 taxable 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

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

FACTUAL FINDINGS

1. Appellant filed a timely, joint¹ 2018 California Resident Income Tax Return reporting \$0 total tax.
2. Subsequently, FTB received information from the IRS indicating that it increased appellant's federal income by \$291,357 due to unreported income of \$82,500 distributed to appellant by Morgan Stanley Domestic Holdings, Inc., and \$208,857 distributed to appellant by The Trust Company of Oklahoma (TCO).

¹ Appellant's joint filer did not join the appeal.

3. FTB made corresponding adjustments to appellant's California tax liability and issued a Notice of Proposed Assessment (NPA) proposing to assess additional tax of \$14,907, plus applicable interest.
4. Appellant protested the NPA with FTB. FTB denied appellant's protest and issued a Notice of Action affirming the NPA.
5. Appellant filed this timely appeal.
6. On appeal, appellant submits a copy of a 2018 Tax Information Statement (tax statement) issued by TCO reporting: (1) an account ending in 9038 is a Roth IRA; (2) a distribution was made to appellant in the amount of \$208,857 (rounded); and (3) the fair market value of the Roth IRA at the end of 2018 was \$0.
7. Appellant also submits a copy of a letter sent by a TCO employee to the IRS dated July 20, 2021, indicating that TCO originally issued the 2018 1099-R, Distributions from Pensions, Annuities, Retirement, or Profit-Sharing Plans, IRAs, Insurance Contracts, etc. (Form 1099-R), for an account ending in 9038 that had an incorrect distribution code in box 7 for a distribution of \$208,857. The letter states that the distribution should have been reported with a taxable amount of \$0.
8. On appeal, FTB submits a federal Wage and Income Transcript (transcript) that includes a Form 1099-R issued by TCO reflecting a distribution of \$208,857 and reporting a "distribution code value" of "death." That Form 1099-R also reports both that the tax amount is undetermined and, on the contrary, that the taxable amount of the distribution was \$208,857. The transcript includes another Form 1099-R issued by TCO reflecting a distribution of \$208,857. The second Form 1099-R reports that the distribution is nontaxable.

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.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof with respect to a deficiency assessment based on a federal action. (*Appeal of Gorin*, *supra*.)

In this appeal, FTB's proposed assessment was based on a final federal determination, and appellant has the burden of proving that FTB's proposed assessment is incorrect. Appellant asserts that a Form 1099-R in the amount of \$208,857 incorrectly reported a distribution from a Roth IRA² as a taxable distribution. In support, appellant submits a letter from an employee of TCO to the IRS stating that the company incorrectly coded the original Form 1099-R such that it was reported as a taxable distribution rather than a nontaxable distribution from a Roth IRA. The letter states that an amended Form 1099-R was electronically filed with the IRS on June 24, 2020.³ OTA finds that TCO likely labeled the amended Form 1099-R as "original" instead of "amended" resulting in two Forms 1099-R reflected on appellant's transcript, both reporting a distribution of \$208,857, one reported as taxable and one reported as nontaxable.

FTB asserts that appellant has not met his burden of proving error in its determination. At OTA's request, FTB submits appellant's transcript showing two Forms 1099-R issued to appellant, one reporting a taxable distribution of \$208,857 and the other reporting a nontaxable distribution of the same amount. In its additional brief, FTB opines that there were two separate distributions of the same amount with different account numbers (U3460001138 and U3460002667⁴).

Internal Revenue Code (IRC) section 408(d)(1) states that "qualified distributions" are not includable in gross income.⁵ IRC section 408(d)(2)(A)(ii) provides that a distribution made to a beneficiary (or to the estate of the individual) on or after the death of the individual, is a qualified distribution.

OTA finds it likely that in 2018 there was a single distribution of \$208,857 to appellant from a nontaxable Roth IRA account and that it was a qualified distribution rendering it nontaxable. The tax statement issued by TCO shows a single distribution to appellant. Moreover, the account number on the tax statement matches the account number on the letter to the IRS which states that the Form 1099-R was incorrectly coded as a taxable distribution.

² A Roth IRA is an individual retirement account that is funded with contributions that have already been taxed. As such, distributions from contributions to Roth IRAs are generally nontaxable. (See Internal Revenue Code, § 408A.)

³ Appellant also submits a letter from the IRS, which determined that no action was necessary.

⁴ FTB redacted these numbers from the federal account transcript prior to submission to OTA, so OTA cannot confirm these numbers were on the Forms 1099-R.

⁵ Pursuant to R&TC section 17501(a), California generally conforms to IRC section 408 relating to IRAs.

FTB also submits a CP 2000 Data Sheet which does not reflect more than one \$208,857 distribution (either taxable or nontaxable) to appellant in taxable year 2018. The tax statement also expressly states that the distribution came from a Roth IRA account and shows that after the distribution there was nothing left to distribute. The tax statement shows that even though the distribution was from a Roth IRA account, it was miscoded on the Form 1099-R portion as a taxable distribution. The numbers to which FTB refers to as “account numbers” do not match the account number on the tax statement, and OTA is unable to reconcile the “account numbers” to appellant’s Roth IRA account. OTA is therefore unable to determine whether these “account numbers” are truly that, rather than submission or transaction numbers for the Forms 1099-R issued by TCO. Moreover, the distribution appears to be nontaxable as it was a distribution from a Roth IRA to a beneficiary after the original owner died. The corrected Form 1099-R reports that the distribution also satisfied the five-year holding period required for distributions to be “qualified.” (IRC, § 408A(d)(2)(B).) Based on the evidence in the record, OTA finds that it is more likely than not that there was a single distribution to appellant of \$208,857 that qualifies for exclusion from appellant’s gross income.

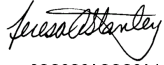
However, appellant makes no arguments and submits no evidence to support an error in the unreported \$82,500 distributed to appellant by Morgan Stanley Domestic Holdings, Inc. Therefore, OTA sustains FTB’s proposed assessment of tax with respect to this distribution.

HOLDING

Appellant has established error in the portion of FTB's proposed assessment of additional tax with respect to a distribution of \$208,857 from TCO. Appellant has not established error in the remainder of FTB's proposed assessment.

DISPOSITION

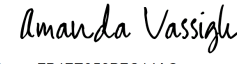
FTB's action proposing tax on the distribution of \$208,857 from TCO to appellant is reversed. OTA otherwise sustains FTB's action.

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Teresa A. Stanley
Administrative Law Judge

We concur:

DocuSigned by:

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Steven Kim
Administrative Law Judge

DocuSigned by:

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Amanda Vassigh
Administrative Law Judge

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