

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of: )  
**J. LAO** ) OTA Case No. 240817209  
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**OPINION**

Representing the Parties:

For Appellant: J. Lao  
For Respondent: David C. Cortez, Associate Government Program Analyst  
For Office of Tax Appeals: Namrita Randhawa, Program Specialist

S. KIM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, J. Lao (appellant) appeals an action by the Franchise Tax Board (respondent) proposing additional tax of \$7,038 and applicable interest for the 2019 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 has demonstrated error in respondent’s proposed assessment, which is based on a federal determination.

**FACTUAL FINDINGS**

1. Appellant timely filed her 2019 California income tax return.
2. Subsequently, respondent received information showing that the IRS increased appellant’s federal taxable income due to unreported taxable income of \$65,193.<sup>1</sup> The IRS assessed additional tax based on the adjustment.

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<sup>1</sup> A Form 1099-R issued to appellant indicates an early distribution from a retirement plan with a taxable amount of \$65,193 and state tax withholding of \$651.93.

3. Respondent issued appellant a Notice of Proposed Assessment (NPA) increasing her taxable income by \$65,193 and proposing additional tax of \$7,038<sup>2</sup> plus applicable interest.
4. Appellant timely protested the NPA.
5. Respondent issued appellant a position letter informing appellant the IRS did not cancel or reduce the federal adjustment.
6. Appellant submitted to respondent a revised federal income tax return showing that she increased her federal adjusted gross income (AGI) by \$65,193 (for taxable pensions and annuities) and increased her itemized deductions by \$65,193,<sup>3</sup> resulting in no change to the federal taxable income.
7. Respondent issued appellant a Notice of Action affirming the NPA.
8. Appellant timely filed this appeal.
9. During this appeal, respondent submitted appellant's 2019 IRS Account Transcript dated December 3, 2024, showing that appellant filed an amended return on March 18, 2024, but that the IRS has not canceled or reduced the federal assessment of additional tax. Respondent also submitted appellant's 2019 IRS Wage and Income Transcript dated September 10, 2024, showing that appellant received a Form 1099-R reporting an early distribution with a taxable amount of \$65,193.

#### DISCUSSION

A taxpayer shall either concede the accuracy of a federal determination or state how it is erroneous. (R&TC, § 18622(a).) If the IRS makes a change or correction to “any item required to be shown on a federal tax return, including any gross income, deduction, penalty, credit, or tax for any year,” the taxpayer must report the federal change to respondent within six months after the date it becomes final. (*Ibid.*) A deficiency assessment based on a federal audit report is presumptively correct, and the taxpayer bears the burden of proving that the determination is erroneous. (*Appeal of Gorin*, 2020-OTA-018P.) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof with respect to an assessment based on a federal action. (*Ibid.*)

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<sup>2</sup> The additional tax amount includes a 2.5 percent early distribution tax of \$1,629 and a withholding credit of \$652.

<sup>3</sup> Appellant added a deduction on Schedule A, line 8c for “[p]oints not reported to you on Form 1098” in the amount of \$65,193.

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 pension and annuity income. (IRC, § 61(a)(8), (10).) Generally, unless an exemption applies, a distribution from a qualified retirement plan or an individual retirement account (IRA) is included in income for the year of distribution. (IRC, §§ 402(a), 408(d).)<sup>4</sup> IRC section 72(t)(1) provides that if a taxpayer receives an early distribution from a qualified retirement plan, as described in IRC sections 402 and 408, the early distribution is subject to a 10 percent tax (in addition to the income tax otherwise imposed), if, among other things, the taxpayer received the distribution before the age of 59½. (IRC, §§ 4974(c), 72(t)(2)(A)(i).) R&TC section 17085(c)(1) adopts IRC section 72(t) for California tax purposes but reduces the rate of the early distribution tax from 10 percent to 2.5 percent.

Income tax deductions are a matter of legislative grace, and the taxpayer bears the burden of establishing entitlement to the deductions claimed. (*Appeal of Vardell*, 2020-OTA-190P.) To meet this burden, a taxpayer must point to an applicable statute authorizing the deduction and show by credible evidence that the deduction claimed falls within the scope of the statute. (*Appeal of Jindal*, 2019-OTA-372P; *Appeal of Dandridge*, 2019-OTA-458P.) Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(b).) A preponderance of the evidence means the taxpayer must establish by documentation or other evidence the circumstances it asserts are more likely than not to be correct. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.)

Here, respondent properly assessed additional tax based on a federal assessment. The evidence shows that appellant received an early distribution of \$65,193 from a retirement account but failed to report the taxable income. Appellant does not appear to contest the additional income or the 2.5 percent early distribution tax, as she has filed an amended federal income tax return increasing her federal AGI by \$65,193 for taxable pensions and annuities income. Instead, appellant appears to argue that she is entitled to increase her itemized deductions by \$65,193, offsetting the additional income.<sup>5</sup> The record shows that the IRS received appellant’s amended return on March 18, 2024, but the IRS has not abated its

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<sup>4</sup> R&TC sections 17501 and 17504 incorporate IRC section 402 in relevant part. R&TC sections 17507 and 17508 incorporate IRC section 408 in relevant part.

<sup>5</sup> Appellant increased her itemized deductions by \$65,193 in her amended federal return. However, appellant has not filed a corresponding amended California return reporting any additional income and/or deductions.

assessment, in whole or in part. Moreover, appellant has not provided any evidence to establish that she is entitled to an additional deduction of \$65,193 for points not reported on Form 1098.<sup>6</sup> Consequently, appellant has failed to show error in the federal determination.

HOLDING

Appellant has not demonstrated error in the proposed assessment, which is based on a federal determination.

DISPOSITION

Respondent's action is sustained.

DocuSigned by:  
*Steven Kim*  
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Steven Kim  
Administrative Law Judge

We concur:

Signed by:  
*Seth Elsom*  
C04CD432E3254FD...  
Seth Elsom  
Hearing Officer

Signed by:  
*L. Katrine Shelton*  
0A4B18E001043E...  
L. Katrine Shelton  
Administrative Law Judge

Date Issued: 12/17/2025

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<sup>6</sup> The record shows that appellant received a Form 1098 reporting points paid on purchase of principal residence of \$5,235 and mortgage insurance premiums of \$10,556. On both her federal and California returns, it appears that appellant deducted the points paid of \$5,235 as "other taxes" of \$5,235. It does not appear that appellant reported the mortgage insurance premiums of \$10,556.