

Federal Determination

2. FTB received information from the IRS that the IRS adjusted appellants' income reported on their federal joint Form 1040 U.S. Individual Income Tax Return for the 2019 tax year by \$137,202. The IRS assessed additional tax of \$30,309 on August 1, 2022, as reflected on an IRS Account Transcript.
3. Appellants failed to notify FTB that the IRS adjusted their income and assessed additional tax for the 2019 tax year.
4. The federal determination by the IRS was comprised of two separate items of income that were each reported by a third-party payor on a Form 1099-R, Distributions from Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, Etc. (Form 1099-R) filed with the IRS under appellant's Social Security number. The two items of income that were reported on the Forms 1099-R are: (1) a taxable distribution to appellant from Fidelity of \$37,339; and (2) a taxable distribution to appellant from National Financial of \$99,863. The information from the Forms 1099-R is reflected on a Wage and Income Transcript, which the IRS provided to FTB.
5. The Form 1099-R filed by Fidelity indicates that the distribution to appellant was treated as "Qualified plan loan offsets." The Form 1099-R for Fidelity also indicates that the "IRA/SEP/SIMP box not checked", and that the distribution was an "Early Distribution, no known exception (in most cases, under age 59 ½)."
6. The Form 1099-R filed by National Financial indicates that the "IRA/SEP/SIMP box checked", and that the distribution was an "Early Distribution, no known exception (in most cases, under age 59 ½)."

Procedural History

7. FTB issued appellants a Notice of Proposed Assessment (NPA) reflecting the federal determination, which was an adjustment to income of \$137,202, and proposed additional tax of \$9,875, which included a proposed assessment for an "Other Tax: Premature Distribution Tax" of \$3,430. The NPA further indicates that the "[e]arly withdrawals of non-qualified withdrawals from an IRA, pension, or qualified tuition program are subject to an additional tax of 2.5 percent of the early withdrawal amount."
8. Appellants timely filed a protest to the NPA with FTB.
9. On October 16, 2024, FTB issued appellants an NOA that reduced the proposed assessment by allowing appellants to claim a California withholding tax credit in the

amount of \$316.72 and reducing the proposed assessment to \$9,856.28, but otherwise affirming the NPA.¹

10. On November 16, 2024, appellants timely filed their appeal to the NPA (Appeal).

DISCUSSION

California residents are taxed upon their entire taxable income. (R&TC, § 17041(a).) Unless an exception applies, distributions from a qualified plan and an individual retirement account (IRA) are generally includible in the gross income of California residents. (R&TC, §§ 17071, 17501(b), 24601; Internal Revenue Code (IRC), §§ 61, 401, 402, 408.) Distributions from a qualified plan that may not be taxable include certain rollovers, and those from a “Roth” account. (R&TC, §§ 17071, 17501(b), 24601; IRC, § 401, 402(c), 402A, 403(a)(4).) Distributions from an IRA that may not be taxable include rollover contributions, returned and excess contributions, transfers incident to a divorce, distributions for charitable purposes, and for health savings account funding. (R&TC, §§ 17071, 17501(b), 24601; IRC, § 408(d).)

A distribution from a “qualified retirement plan”² made to a taxpayer prior to reaching age 59 and ½ is treated as an early distribution and is subject to an additional tax in California at a rate of 2.5 percent of the taxable distribution. (R&TC, § 17085; IRC, § 72(a)(1), (t).)

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.) A taxpayer shall either concede the accuracy of a federal determination or state how it is erroneous. (R&TC, § 18622(a).) A taxpayer’s unsupported assertions are insufficient to satisfy the burden of proof with respect to an assessment based on a federal action. (*Appeal of Gorin, supra.*)

When 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 determination to FTB within six months after the date it becomes final. (R&TC, § 18622(a).) If a taxpayer fails to notify FTB of a change or correction by the IRS, the FTB may mail a notice of proposed deficiency to the taxpayer at any time. (R&TC, § 19060(a).)

¹ The NOA also disallowed appellants’ claimed earned income tax credit of \$498.00, which appellants have not appealed and is, therefore, not at issue.

² A “qualified retirement plan” includes a qualified pension plan described in IRC section 401(a) and an IRA described in IRC section 408(a). (R&TC, § 24601; IRC, §§ 72(t), 4974(c).)

Appellant's distribution from Fidelity is with respect to a qualified plan and is, therefore, subject to income tax in California. (See R&TC, §§ 17071, 17501(b), 24601; IRC, §§ 61, 401, 402; *Appeal of Gorin, supra.*) Appellant's distribution from National Financial is from a taxable IRA.³ (See R&TC, §§ 17071, 17501(b), 24601; IRC, §§ 61, 408; *Appeal of Gorin, supra.*)

The proposed assessment of tax on appellants' unreported taxable income resulting from the distributions from Fidelity and National Financial is presumptively correct as it is both proposed by FTB and is the result of a federal determination. (See *Appeal of Gorin, supra*; R&TC, § 18622(a).)

The Forms 1099-R issued by Fidelity and National Financial both indicate that the distributions to appellant were early distributions with no known exceptions. As such, both distributions are presumptively subject to the additional tax in California at a rate of 2.5 percent of the taxable distribution. (See R&TC, § 17085; IRC, § 72(a)(1), (t).)

In their Appeal to OTA, appellants assert, in relevant part, that they "did not earn the amount of money that has been stated by the FTB", and that "[s]ome of the income reported may have not been reported correctly by the reporting agencies or parties. This is currently being contested and in the process of being reviewed in order to determine the correct amounts of any actual earned income that was not reported properly as it may have been from other sources." In their Protest to the NPA, appellants had also asserted, in relevant part, that the documents provided to FTB may have been inaccurate, and that "[t]he proposed amount (sic) may be incorrect as taxable totals may be different or incorrect as reported income may be subject to exemptions for disability and health reasons Presently I am unemployed with medical related and severe health issues."

However, appellants do not present any evidence indicating that either of the distributions are subject to an exception or exemption from tax, the amounts reported to the IRS in the Forms 1099-R are inaccurate, the assessments are erroneous, the IRS has abated the assessments, FTB's proposed adjustments and assessments are incorrect, or that the appellants are not liable for the additional 2.5 percent tax on the early distributions. Appellants have made only vague, unsupported arguments, and these arguments are not sufficient to satisfy their burden of proof. (*Appeal of Gorin, supra.*) Therefore, appellants are liable for the tax on the unreported income, and FTB's proposed determination is sustained.

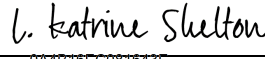
³ There is no indication that appellant's IRA with National Financial was a Roth IRA. A Roth IRA would not be subject to tax. (R&TC, § 24601; IRC, § 402A.)

HOLDING

Appellants have not established error in FTB’s proposed assessment of additional tax, which is based on a federal determination.


DISPOSITION

OTA sustains FTB’s action.


Signed by:


L. Katrine Shelton
Administrative Law Judge

We concur:

DocuSigned by:


Steven Kim
Administrative Law Judge

DocuSigned by:


Andrew Wong
Administrative Law Judge

Date Issued: 11/4/2025