

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 250421946
J. PRUY)
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OPINION

Representing the Parties:

For Appellant: J. Pruy
For Respondent: AnaMarija Antic-Jezildzic,
Program Specialist
For Office of Tax Appeals: Derick Brannan, Attorney

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, J. Pruy (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$2,473.80, plus interest, for the 2020 taxable year.

Appellant elected to have this appeal determined pursuant to the procedures of the Small Case Program. Those procedures require the assignment of a single panel member. (Cal. Code Regs., tit. 18, § 30209.05(b).) 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, which is based on a federal determination?

FACTUAL FINDINGS

1. Appellant timely filed state and federal tax returns for the 2020 taxable year reporting total wages and adjusted gross income (AGI) of \$79,964.
2. For state tax purposes, appellant reported tax of \$4,017. After considering payments of \$4,428, the return claimed a refund due of \$411, which FTB issued.

3. In contrast to the AGI reported on the state and federal tax returns, the IRS Account Transcript (Federal Transcript) for appellant's 2020 taxable year shows AGI of \$101,521, an increase of \$21,557 over appellant's reported AGI. The IRS assessed additional tax for the 2020 taxable year on August 8, 2022, which appellant paid.
4. As reflected on the IRS Wage and Income Transcript, the bulk of the \$21,577¹ difference between the AGI reported to the state and the AGI reflected on the Federal Transcript arose from \$21,344 in taxable distributions reflected on Forms 1099-R, Distributions from Pensions, Annuities, Retire or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.
5. Based on the discrepancy between the AGI reported on appellant's state tax return and the AGI reflected on the Federal Transcript, FTB issued a Notice of Proposed Assessment (NPA) dated November 27, 2024. The NPA increased appellant's California income by \$21,557 and proposed additional state tax of \$2,473.80 plus applicable interest.
6. Appellant protested the NPA, and FTB issued a Notice of Action affirming the NPA.
7. Appellant timely appealed.

DISCUSSION

R&TC section 18622(a) provides that a taxpayer shall either concede the accuracy of a federal determination or state why it is erroneous. A proposed assessment based on a federal determination is presumptively correct, and appellant bears the burden of proving that FTB's proposed assessment is erroneous. (*Appeal of Gorin*, 2020-OTA-018P.) 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, at p. *4, fn. 6.) Unsupported assertions are insufficient to satisfy appellant's burden of proof with respect to an assessment based on a federal determination. (*Appeal of Gorin*, *supra*.)

Here, FTB obtained information from the IRS indicating that appellant did not include in federal or state AGI certain income such as additional wage income, interest income, and pension/annuity income. The IRS assessed additional tax based on those unreported income items. The difference between the amount reported on appellant's state tax return, and the

¹ The additional income of \$21,557 consisted of taxable wages of \$184, interest of \$22, pension/annuities of \$21,334 and other income of \$17.

revised amounts shown in the IRS records is \$21,577. After adding an allowance for additional withholding credits of \$57.20, FTB proposed additional state tax of \$2,473.80.

Appellant contends that he does not owe additional state tax. Appellant's argument on appeal rests on the assertion that the IRS did not question the amounts shown on the 2020 federal tax return. In the alternative, appellant asks for relief because he has experienced "a financial hardship" due to an event wherein he endured physical hardship from which he has not recovered.

While appellant asserts that the IRS did not question the amounts originally reported on his federal return, the Federal Transcript provided by FTB shows that the IRS identified additional income and assessed additional tax. Appellant does not explain why the amounts included in the NPA, which increased appellant's taxable income, are in error. Nor does appellant assert or substantiate that any distributions were nontaxable. Absent evidence that FTB erred in following the federal determination increasing appellant's AGI, OTA finds that the AGI asserted by FTB and supported by appellant's Federal Transcript and IRS Wage and Income Transcript, is the correct starting point for determining appellant's state tax obligation for the 2020 taxable year.

Appellant also asks that OTA relieve his tax obligation due to financial hardship brought about by the aforementioned physical hardship. However, OTA does not have authority to reduce the amount of tax based on financial hardship.² (*Appeal of Robinson*, 2018-OTA-059P.)

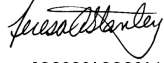
² Although OTA cannot reduce a tax liability based on financial hardship, FTB may consider whether appellant is unable to pay under its payment arrangement or offer in compromise programs. (See <https://www.ftb.ca.gov/pay/if-you-cant-pay/index.html>.) FTB included FTB 4905 PIT (Offer in Compromise Booklet for Individuals) and FTB 3567 (Installment Agreement Request) in its exhibits should appellant want to pursue these options.

HOLDING

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

DISPOSITION

OTA sustains FTB's action.

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Teresa A. Stanley
Administrative Law Judge

Date Issued: 2/23/2026