

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:	)	OTA Case No. 240716735
K. MONROE¹	)	
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OPINION

Representing the Parties:

For Appellant:	K. Monroe
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For Respondent:	Nancy E. Parker, Attorney
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For Office of Tax Appeals:	Michelle Huh, Attorney
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S. KIM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, K. Monroe (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$12,212 and applicable interest for the 2018 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 shown error in FTB's proposed assessment of additional tax, which is based on a final federal determination.

FACTUAL FINDINGS

- Appellant and his former spouse (the couple) timely filed a joint 2018 California Resident Income Tax Return, reporting taxable income of \$95,419, total tax of \$2,627, and income tax withholdings of \$5,110, for an overpayment of \$2,483. The couple requested a refund of the overpayment. FTB transferred the overpayment to the 2014 taxable year account to satisfy the liability for that year.

¹ Appellant jointly filed the return with appellant's spouse, but appellant's spouse did not join this appeal.

2. Subsequently, FTB received information showing that the IRS increased the couple's federal adjusted gross income by \$130,542 for unreported pension or annuity income of \$109,190, non-employee compensation of \$22,955, medical savings distributions of \$19, minus a self-employment tax deduction of \$1,622.
3. FTB issued the couple a Notice of Proposed Assessment (NPA) that generally followed the IRS adjustments, as applicable under California law, increasing the couple's taxable income by \$130,523² and proposing additional tax of \$12,212,³ plus applicable interest.
4. Appellant protested the NPA, asserting that his former spouse withdrew her pension funds without his knowledge and that she is responsible for the tax pursuant to a court order. Appellant also requested a hearing with FTB.
5. FTB issued appellant a letter acknowledging the protest and explaining that information received from the IRS did not show that the federal assessment was canceled or reduced. FTB provided appellant the option to have an audit hearing, request innocent spouse relief, or waive the hearing.
6. When appellant did not respond to the letter, FTB issued the couple a Notice of Action affirming the NPA.
7. Appellant timely filed this appeal.
8. On appeal, FTB submits, for the 2018 tax year, federal Wage and Income Transcripts for appellant and his former spouse as of September 2024, and the couple's joint federal Account Transcript as of April 2, 2025.

DISCUSSION

When the IRS makes a final federal determination of tax, the taxpayer must concede the accuracy of the federal changes or state where the changes are erroneous. (R&TC, § 18622(a).) It is well settled that a deficiency assessment based on a federal adjustment is presumed to be correct, and the taxpayer bears 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 proposed assessment is incorrect, it must be sustained. (*Ibid.*) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof. (*Appeal of Dillahunty*, 2024-OTA-024P.)

² FTB did not include the medical savings distributions of \$19 because such distributions are not taxable in California if used to pay for qualified medical expenses. (See R&TC, § 17215; IRC, § 220.)

³ FTB included an early withdrawal tax of \$2,730. (See R&TC, § 17085(c); IRC, § 72(t).)

R&TC section 17071 incorporates Internal Revenue Code section 61, which defines “gross income” as “all income from whatever source derived,” including compensation for services and income from pensions and annuities. (IRC, § 61(a)(1), (8), (10).) Generally, a distribution from a qualified retirement plan or an individual retirement account is included in income for the year of distribution. (IRC, § 402(a), 408(d)(1).)⁴ California residents are taxed on their entire taxable income regardless of source. (See R&TC, § 17041(a).)

Here, appellant asserts that his former spouse withdrew funds from her pension account without his knowledge and that she is responsible for the tax pursuant to a court order.⁵

Each spouse is jointly and severally liable for the entire tax due. (R&TC, § 19006(b).) Because appellant and his former spouse filed a joint return, they are jointly and severally liable for the amount due listed on the return. Although a tax liability may be revised by a court in a proceeding for dissolution of marriage under certain conditions, appellant has not provided any evidence of the court order. (See *ibid*; *Appeal of Dillahunty*, *supra*.) Therefore, no basis in the record allows OTA to revise appellant’s tax liability.

An individual who files a joint return may be relieved of all or a portion of the joint and several liability if the individual qualifies for innocent spouse relief. (R&TC, § 18533(a); IRC, § 6015(a).) The individual may request innocent spouse relief from the IRS or FTB and may appeal the FTB determination to OTA. (See R&TC, § 18533(e)(1)(A)(ii), 18533(i).) The individual must elect for innocent spouse relief within two years after the date FTB begins any collection action. (R&TC, § 18533(b)(1)(E).) The individual may also request innocent spouse relief during the appeal process with OTA. (See Cal. Code Regs., tit. 18, § 30312(i)(2).)

Here, appellant provided no evidence that he filed for innocent spouse relief with the IRS or FTB. FTB provided appellant an opportunity to file for innocent spouse relief during protest and on appeal, but appellant failed to respond. Furthermore, appellant has not requested innocent spouse relief during this appeal. Without a formal request, OTA cannot grant or deny innocent spouse relief to appellant.

Thus, appellant has not shown any error in FTB’s proposed assessment of tax or rebutted FTB’s determination based on a federal determination. Accordingly, appellant has not satisfied his burden to show FTB’s determination is erroneous.

⁴ California generally conforms to IRC sections 402(a) and 408(d), with modifications not relevant to this appeal. (See R&TC, §§ 17501(a), 17504, 17507.)

⁵ Appellant presented no arguments or evidence regarding error in the federal adjustments, and accordingly, OTA will only address appellant’s argument regarding the pension withdrawal.

HOLDING

Appellant has not shown error in FTB's proposed assessment of additional tax, which is based on a final federal determination.

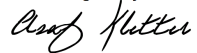
DISPOSITION

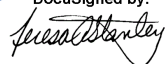
FTB's action is sustained.

DocuSigned by:

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Steven Kim
Administrative Law Judge

We concur:

DocuSigned by:

D17AEDDCAAB045B...
Asaf Kletter
Administrative Law Judge

DocuSigned by:

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Teresa A. Stanley
Administrative Law Judge

Date Issued: 7/22/2026