

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
T. CHENG

) OTA Case No. 19115477
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OPINION

Representing the Parties:

For Appellant: Jerry Lan, CPA

For Respondent: Rachel Abston, Senior Legal Analyst

D. CHO, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, T. Cheng (appellant)¹ appeals an action by respondent Franchise Tax Board (FTB) partially denying appellant’s claim for refund of \$861.55² for the 2015 taxable year.

Appellant waived the right to an oral hearing; therefore, this matter is being decided based on the written record.

ISSUE

Whether appellant has established error in FTB’s assessment of additional tax for the 2015 taxable year, which was based on a federal determination.

FACTUAL FINDINGS

1. Appellant and his spouse timely filed their joint 2015 California Resident Income Tax Return, which reported a federal adjusted gross income of \$764,194.
2. Subsequently, FTB received information that the Internal Revenue Service (IRS) had increased appellant’s federal adjusted gross income to \$771,081. The increase was based

¹ Appellant filed a joint return with his spouse, but he filed this appeal in his name only. For convenience of reference, references to “appellant” may at times refer to appellant, to appellant and his spouse jointly, or to appellant’s spouse.

² This amount consists of \$778 in tax, plus accrued interest of \$83.55.

upon the IRS's determination that appellant had underreported interest income by \$4,289 and gambling income by \$2,598. Based on the IRS information, FTB revised appellant's California income in accordance with the federal adjustments. In addition, FTB disallowed appellant's claimed itemized deductions of \$11,532 and instead allowed a standard deduction of \$8,088. This resulted in an additional tax liability of \$1,168, plus interest, which was reflected in a Notice of Proposed Assessment (NPA) that FTB sent to appellant on December 6, 2018.

3. Appellant did not timely protest the NPA, and it became a final liability.
4. However, on March 1, 2019, appellant filed an amended California Resident Income Tax Return for 2015, which reported a federal adjusted gross income of \$766,010 (a net \$1,816 increase from the originally reported amount) and a tax due of \$205. The \$1,816 increase to appellant's originally reported income was based upon two changes: (i) appellant provided Form 1099 information showing that he had underreported interest income from Pacific Western Bank by \$4,289; and (ii) appellant provided Form 1099 information showing that he had overreported interest income from Royal Business Bank by \$2,473. Appellant's amended return, however, did not incorporate the IRS's determination that appellant had underreported gambling income by \$2,598. Appellant submitted a payment of \$205 with the amended return.
5. On March 8, 2019, FTB transferred a payment of \$1,295.03 from appellant's 2018 taxable year to his 2015 taxable year to satisfy the final liability as determined in the NPA.
6. FTB did not accept the amended return because the federal adjusted gross income amount reported therein, of \$766,010, did not match the revised federal adjusted gross income amount of \$771,081, as determined by the IRS. Nonetheless, FTB treated the amended return as a claim for refund and examined it. Upon review of the claim, FTB adjusted its deficiency by reversing the adjustments the NPA had made to appellant's itemized deductions.³ FTB continued, however, to uphold the IRS's determination of additional interest and gambling income in full. These adjustments reduced the determined deficiency in appellant's 2015 tax liability from \$1,168 to \$778. After application of the

³ In other words, FTB allowed appellant's claimed itemized deductions of \$11,532 rather than the standard deduction, as originally determined in the NPA.

amounts FTB had received (the transferred amount from 2018 and the amount paid with appellant's amended return), there was an overpayment in appellant's 2015 account of \$657.18 (\$638.48 in tax and \$18.70 of interest), which FTB refunded to appellant. By letter dated October 17, 2019, FTB informed appellant of the partial denial of his claim for refund.

7. This timely appeal followed.

DISCUSSION

R&TC section 18622(a) requires a taxpayer to concede the accuracy of federal changes to a taxpayer's income or state where the changes are erroneous. It is well settled that a deficiency assessment based on a federal adjustment to income is presumed to be correct and a taxpayer bears the burden of proving that FTB's determination is erroneous. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509, 514; *Appeal of Brockett* (86-SBE-109) 1986 WL 22731.)

Here, FTB received information from the IRS that appellant's reported 2015 federal adjusted gross income was increased by \$6,887. Based on this information, FTB made conforming adjustments by increasing his California taxable income by \$6,887.⁴ Therefore, it is appellant's burden to demonstrate that FTB's determination is erroneous.

Appellant contends that he correctly reported his federal adjusted gross income of \$766,010 on his amended return. In support of this contention, appellant provided a copy of his tax return transcript for the 2015 taxable year, which appellant received from the IRS on December 17, 2018. However, the tax return transcript merely reflects what appellant originally reported to the IRS. It does not reflect the changes that the IRS subsequently made to the income reported on that return. Those changes were reflected on appellant's federal account transcript, which contains a complete summary of appellant's originally reported income for 2015, as well as the IRS's adjustments to the originally reported amount. The federal account transcript lists appellant's corrected federal adjusted gross income as \$771,081.

However, we have carefully reviewed the Forms 1099 and W-2G information that has been submitted by the parties. Those forms were the basis upon which the IRS made its \$6,887 increase to appellant's federal adjusted gross income. That increase was based upon two adjustments, \$2,598 of underreported gambling income and \$4,289 of underreported interest

⁴ As noted above, FTB reversed its initial determination that appellant was only entitled to the standard deduction and is now allowing the claimed itemized deductions.

income. As to unreported gambling income, the Forms 1099G show that appellant's spouse received gross gambling winnings of \$9,440, whereas appellant only reported gambling winnings of \$6,842 on their original and amended California returns. Accordingly, the IRS's adjustment to appellant's gambling income was correct. However, the parties have provided Form 1099 information supporting appellant's position that although appellant underreported his interest income from one source (Pacific Western Bank) by \$4,289, he *overreported* his interest income from another source (Royal Business Bank) by \$2,473. In recomputing appellant's 2015 tax liability, FTB has failed to take into account the \$2,473 overstatement of interest income from Royal Business Bank.⁵ Although FTB concedes that the IRS adjustment to appellant's federal adjusted gross income includes the overreported interest income from Royal Business Bank, FTB has failed to rectify this error in its recalculation of appellant's tax liability. It must do so.

⁵The additional income reported on appellant's amended 2015 return consists of the net of these two adjustments (\$4,289 less \$2,473 equals \$1,816).

HOLDING

Appellant is entitled to a further partial allowance of his claim for refund. That amount shall be determined by recomputing appellant’s tax liability based upon a federal adjusted gross income of \$768,608 (to take into account the \$2,473 of overreported interest income from Royal Business Bank).

DISPOSITION

Appellant is entitled to a further partial allowance of his claim for refund in an amount to be determined based upon recomputing his tax liability using a federal adjusted gross income of \$768,608 (\$2,473 less than the amount determined by the IRS and FTB). In all other respects, FTB’s denial of appellant’s claim for refund is sustained.

DocuSigned by:
Daniel Cho
7B28A07A7E0A43D
Daniel K. Cho
Administrative Law Judge

We concur:

DocuSigned by:
Natasha Ralston
25F8FE08FF56478
Natasha Ralston
Administrative Law Judge

DocuSigned by:
Jeffrey I. Margolis
5E9822EBB1BA41B
Jeffrey I. Margolis
Administrative Law Judge

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