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BOARD OF EQUALIZATION

STATE OF CALIFORNIA

In the Matter of the Appeal of:	**HEARING SUMMARY**
	PERSONAL INCOME TAX APPEAL
KEN BELANGER AND KARLA SOLIS[1]	Case No. 607835

Year	Proposed Assessment
2008	$3,779

Representing the Parties:

For Appellants: Ken Belanger and Karla Solis

For Franchise Tax Board: Rachel Abston, Senior Legal Analyst

QUESTION: Whether appellants have established error in respondent's proposed assessment, which is based on federal audit information.

HEARING SUMMARY

Background

Appellants filed a joint 2008 California income tax return. On the return, appellants reported federal adjusted gross income (AGI) of $78,377, less the standard deduction of $7,384, for a

[1] Appellants reside in Discovery Bay, Contra Costa County.

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taxable income of $70,993 and a tax liability of $2,364. After applying appellants' withholding credit of $3,252, appellants claimed an overpayment of $888. During processing, respondent applied appellants' personal exemption credits of $198 and reduced appellants' total tax liability to $2,166 (i.e., $2,364 - $198). This increased appellants' overpayment from $888 to $1,086, which respondent refunded to appellants on May 29, 2012. According to respondent's records, respondent sent appellants a Return Information Notice, informing appellants of the changes made to their return which resulted in the revised refund of $1,086. (Resp. Op. Br., pp. 1-2, Exs. A, B & C.)

Respondent subsequently received information from the Internal Revenue Service (IRS) showing adjustments made to appellants' federal return for unreported non-employee compensation of $52,409 and a one-half self-employment tax deduction of $3,703. Based on this information, respondent issued a Notice of Proposed Assessment (NPA) on July 6, 2011, that applied the total income adjustments of $48,706 (i.e., $52,409 - $3,703) to appellants' taxable income. The NPA proposed additional tax of $4,159, plus applicable interest. (Resp. Op. Br., p. 2, Exs. D & E.)

Appellants protested the NPA, asserting that they filed a Schedule C, Profit and Loss from Business (Schedule C), reflecting the unreported income of $52,409 and claiming $23,660 of business expenses for a net profit of $28,749. Appellants also submitted a copy of a Notice CP22A which showed that the IRS made a change to appellants' federal return to adjust their business income. (Resp. Op. Br., p. 2, Ex. F.)

Respondent replied to appellants' protest by notice dated January 19, 2012. Respondent explained that the recent IRS information showed that appellants had a revised federal AGI of $122,995. Respondent further explained that because appellants originally reported federal AGI of $78,377 on their return, the net increase to appellants' federal AGI was $44,618 (i.e., $122,995 - $78,377). On March 9, 2012, respondent issued a Notice of Action (NOA), which revised the NPA. On the NOA, respondent revised the income adjustment to $44,618, instead of adjustments totaling $48,706. This resulted in taxable income of $115,611 (i.e., $70,993 + $44,618) and in a reduced proposed assessment of additional tax of $3,779, plus applicable interest. Appellants then filed this timely appeal. (Resp. Op. Br., p. 2, Ex. G; Appeal Letter, Atth.)

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Contentions

Appellants

Appellants maintain that the proposed assessment is incorrect. Appellants indicate that the income was paid to a business owned by appellants. Appellants contend that they filed a Schedule C for the additional income, which reduced the taxable income by $23,600[2] (business expenses). Appellants note that the IRS accepted the Schedule C. Appellants appear to contend that respondent did not take into account the Schedule C information in its proposed assessment. (Appeal Letter, Atth.)

Respondent

Respondent acknowledges that its NPA included unreported taxable non-employee compensation totaling $52,409 that was not reported on appellants' state return. In addition, the NPA made an adjustment to allow the one half self-employment tax deduction of $3,703. Respondent explains that, after it received additional information from the IRS indicating that the IRS revised its assessment and that appellants' revised federal AGI was $122,995, it revised its proposed assessment accordingly in the NOA based on the difference of appellants' federal AGI (i.e., $122,995 (federal AGI accepted by the IRS) - $78,377 (federal AGI as reported on appellants' state return) = $44,618). (Resp. Op. Br., pp. 3-4, Ex. D, I, J.)

In addition, respondent notes that, according to a review of appellants' federal tax return transcript, appellants incorrectly transferred their federal taxable income amount ($78,377) instead of their federal AGI ($96,277) onto their state return. As such, the error resulted in the income adjustment on respondent's NOA of $17,900 (i.e., $96,277 - $78,377), which is more than the assessment would have been had appellants' correctly transferred the federal AGI to their state return. Respondent contends that appellants' federal AGI (as accepted or revised by the IRS) must match the federal AGI reported on their state return, citing Revenue and Taxation Code (R&TC) section 17072. Respondent explains that, while its NPA did not include this adjustment, respondent included this $17,900 federal AGI difference in the NOA, plus the business income from appellants' Schedule C of $28,749, less the one-half self-employment tax deduction of $2,031, for a total adjustment of $44,618. Respondent thus

[2] On the Schedule C, appellants reported $23,660 of business expenses.

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contends that its NOA reflects the final changes made by the IRS. Respondent further contends that appellants have not provided any additional evidence that respondent's proposed assessment is incorrect. (Resp. Op. Br., pp. 4-6, Ex. K.)

Applicable Law

R&TC section 17072 requires a taxpayer to report the same federal AGI on both his federal and California returns. R&TC section 18622, subdivision (a), provides that a taxpayer shall either concede the accuracy of a federal determination or state wherein it is erroneous. It is well-settled that a deficiency assessment based on a federal audit report is presumptively correct and a taxpayer bears the burden of proving that the determination is erroneous. (*Appeal of Sheldon I. and Helen E. Brockett*, 86-SBE-109, June 18, 1986; *Todd v. McColgan* (1949) 89 Cal.App.2d 509.) Unsupported assertions are not sufficient to satisfy an appellant's burden of proof with respect to an assessment based on federal action. (*Appeal of Aaron and Eloise Magidow*, 82-SBE-274, Nov. 17, 1982.) In the absence of uncontradicted, credible, competent, and relevant evidence showing that respondent's determinations are incorrect, such determinations must be upheld. (*Appeal of Oscar D. and Agatha E. Seltzer*, 80-SBE-154, Nov. 18, 1980.) An appellant's failure to produce evidence that is within his control gives rise to a presumption that such evidence is unfavorable to his case. (*Appeal of Don A. Cookston*, 83-SBE-048, Jan. 3, 1983.)

STAFF COMMENTS

Appellants appear to contend that respondent's proposed adjustment did not reflect the amounts reported on their Schedule C, which reported a net profit of $28,749 (i.e., $52,409 - $23,660). However, respondent did take the Schedule C amounts into account as respondent reduced the amount of unreported income from $52,409 to $28,749. In addition, appellants received credit for the one-half self-employment tax deduction of $2,031. Furthermore, appellants are required to report the same federal AGI on their federal return as on their state return. Here, appellants apparently reported their federal taxable income as their federal AGI on their state return and respondent's proposed assessment included the $17,900 difference between appellants' federal AGI and appellants' federal taxable income versus the amounts reported to respondent. To date, appellants have not demonstrated why these adjustments are incorrect. If either party has any additional evidence to present, they should provide

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their evidence to the Board Proceedings Division at least 14 days prior to the oral hearing pursuant to California Code of Regulations, title 18, section 5523.6.[3]

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[3] Evidence exhibits should be sent to: Claudia Madrigal, Appeals Analyst, Board Proceedings Division, State Board of Equalization, P.O. Box 942879 MIC:80, Sacramento, California, 94279-0080.

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