OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **DAVID DOLLISON, JR.**	OTA Case No. 18011384 Date Issued: November 7, 2018

OPINION

Representing the Parties:

For Appellant: David Dollison, Jr., Taxpayer

For Respondent: Meghan McEvilly, Tax Counsel III

For Office of Tax Appeals: Neha Garner, Tax Counsel III

N. ROBINSON, Administrative Law Judge: Pursuant to Revenue and Taxation Code section 19045,[1] David Dollison, Jr. (appellant) appeals an action by the Franchise Tax Board (FTB or respondent) against a proposed assessment of $1,369 in additional tax, plus interest, for the 2010 tax year.[2]

Appellant waived his right to an oral hearing and therefore the matter is being decided based on the written record.

ISSUES

1. Has appellant established error in respondent's proposed assessment, which is based on a final federal determination for 2010?
2. Did appellant receive sufficient legal notification of respondent's adjustments for 2010?
3. Is appellant liable for the entire amount of the proposed additional tax and interest or may this liability be divided with his ex-spouse?
4. Is appellant eligible for tax amnesty relief?

[1] Unless otherwise indicated, all statutory references are to sections of the Revenue and Taxation Code.

[2] Respondent's proposed assessment also included a $273.80 accuracy-related penalty that it has agreed to reverse.

FACTUAL FINDINGS

1. On February 7, 2011, appellant filed a timely California Resident Income Tax Return (Form 540) for 2010 claiming head of household status.[3] Attached to appellant's return was a Form FTB 4803e, 2010 Head of Household Schedule, wherein appellant stated that he was unmarried as of December 31, 2010.
2. Respondent subsequently received information from the Internal Revenue Service (IRS) which reflected federal adjustments to appellant's 2010 return. The IRS disallowed Schedule C net losses of $41,845. On March 31, 2014, the IRS assessed additional tax of $7,011, plus interest, because of these adjustments. The IRS also imposed an accuracy-related penalty of $1,688.60.
3. Appellant did not inform respondent of the IRS adjustments.
4. The IRS notified respondent of the adjustments. Based on this federal information, respondent made corresponding adjustments to appellant's 2010 return.
5. On September 14, 2015, respondent issued a Notice of Proposed Assessment (NPA) that disallowed the Schedule C business losses in the amount of $41,845. The NPA proposed an additional tax amount of $1,369 and an accuracy-related penalty of $273.80.
6. On October 5, 2015, appellant protested the NPA. He argued that he had not received any IRS correspondence informing him that his 2010 tax return had been revised and stated that the IRS informed him that his 2010 tax account had been closed with no collection action having been taken against him.
7. On July 25, 2016, respondent informed appellant that its proposed assessment was based on information received from the IRS and that respondent was making the same adjustments as the IRS did to the extent that California and federal tax law were the same. Respondent further explained that the adjustments made by the IRS had become final and provided a copy of the federal audit report to appellant. Respondent gave appellant until August 24, 2016, to provide new information.
8. Appellant did not respond to respondent's July 25, 2016 correspondence.

[3] In his appeal letter, appellant erroneously claimed that his 2010 return was filed jointly. The copies of appellant's federal and state returns provided by respondent reveal that appellant filed on a head of household basis.

9. Respondent issued a Notice of Action (NOA) on April 26, 2017, affirming the NPA.[4]

10. Appellant filed this timely appeal. In his appeal letter, appellant argued that his spouse did not prepare the return correctly and that, after going through a divorce, he "was not given any correspondences [sic] from Franchise Tax Board." Appellant also stated that he "was not aware" that he could participate in a tax amnesty program and file an amended return.

11. Respondent sent its NPA and NOA to appellant's most recent address on file, and appellant timely protested both notices.

DISCUSSION

Issue 1 - Has appellant established error in respondent's proposed assessment, which is based on a final federal determination for 2010?

A proposed deficiency assessment based on federal adjustments to income is presumed to be correct, and the burden is on the taxpayer to prove it is erroneous. (*Appeal of Wing E. and Fay D. Lew*, 78-SBE-073, Aug. 25, 1978; *Appeal of Donald G. and Franceen Webb*, 75-SBE-061, Aug. 19, 1975.)[5] Section 18622 requires a taxpayer to concede the accuracy of the final federal changes or to state wherein the changes are erroneous. Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof with respect to an assessment based on a federal action. (*Appeal of Aaron and Eloise Magidow*, 82-SBE-274, Nov. 17, 1982.) California Code of Regulations, title 18, section 30705(c), states that unless there is an exception provided by law, "the burden of proof requires proof by a preponderance of the evidence."[6]

Income tax deductions are a matter of legislative grace and the burden of proving the right to a deduction falls upon the taxpayer. (*New Colonial Ice Co. v. Helvering* (1934) 292 U.S. 435; *Appeal of Franklin E. and Barbara R. Walker*, 84-SBE-139, Sep. 12, 1984.) To carry the burden of proof, the taxpayer must point to an applicable statute and show by credible evidence

[4] Pursuant to section 19116, respondent suspended interest from April 15, 2015, through September 28, 2015.

[5] Precedential decisions of the Board of Equalization, designated by "SBE" in the citation, are available on that Board's website at: <http://www.boe.ca.gov/legal/legalopcont.htm>.

[6] A preponderance of evidence means that the taxpayer must establish by documentation or other evidence that the circumstances it asserts are more likely than not to be correct. (*Concrete Pipe and Products of California, Inc. v. Construction Laborers Pension Trust for Southern California* (1993) 508 U.S. 602, 622.)

that the deductions claimed come within its terms. *(Appeal of Robert R. Telles*, 86-SBE-061, Mar. 4, 1986.)

Section 18622(a) obligated appellant to report any federal changes to respondent within six months of any final federal determination changing or correcting gross income or deductions. Appellant did not report the federal changes. He contends that he did not receive notifications from the IRS about the changes to his federal 2010 return.[7] Nonetheless, pursuant to Internal Revenue Code (IRC) section 6103(d), on April 15, 2014, the IRS provided respondent information about adjustments to appellant's 2010 return. Those adjustments are documented in the July 11, 2017 Franchise Tax Board FEDSTAR IRS Data Sheet.[8]

In his appeal letter, appellant concedes that he is responsible for one-half of the $1,369 in additional state income tax proposed to be assessed for 2010, and presumably the associated interest. The other half of this liability, according to appellant, should be the responsibility of his ex-spouse. (This contention is discussed and analyzed below.) Appellant does not set forth evidence proving the federal adjustments are incorrect. Without such evidence, section 18622 presumes the federal adjustments are correct. Thus, appellant has not proven that respondent's assessment of additional tax and interest based on federal adjustments is erroneous.

Issue 2 - Did appellant receive sufficient legal notification of respondent's adjustments for 2010?

Appellant claims that he was not provided with legally sufficient notification of the proposed tax assessment because he was not given any correspondence from respondent after "going through a difficult and messy divorce." Appellant's claim is refuted by the fact that appellant timely protested respondent's NPA, and filed this appeal from respondent's NOA. In both instances, appellant attached copies of correspondence he had received from respondent. Appellant received the legally required notices and his rights were not prejudiced by any alleged notice defect. (See generally, *Sarkissian v. Commissioner*, T.C. Memo. 2012-278 [even if a

[7] In appellant's October 5, 2015 protest letter, appellant alleges that he did not receive correspondence, "from the IRS regarding 2010 form 1040 and no information that the 2010 tax form was revised." However, we note that appellant's IRS transcript shows various notices issued to him with regard to the IRS examination of his 2010 tax year and that various payments and refund offsets were received from appellant and applied to appellant's federal tax deficiency for 2010. It also shows that appellant appointed a representative to communicate with the IRS concerning his 2010 tax liability in 2014. For these reasons, it appears that appellant (or his appointed representative) was aware of the federal liability. Even if he was not, respondent notified appellant of its determination and provided him an opportunity to contest it through protest and appeal.

[8] Respondent prepares the Franchise Tax Board FEDSTAR IRS Data Sheet from information received electronically from the IRS.

notice of tax deficiency was misaddressed, the notice will be valid if the taxpayer actually received the notice with ample time to file a protest therefrom].)

Issue 3 - Is appellant liable for the entire amount of the proposed additional tax and interest or may this liability be divided with his ex-spouse?

Appellant states that his 2010 return was submitted as married filing jointly and that one-half of the additional tax amount of $1,369 should be paid by his former spouse. However, our inspection of appellant's 2010 California Form 540 and IRS Form 1040 reveals that appellant filed on a head of household basis, not as "married filing jointly." The Form W-2 Wage and Tax Statements affixed to appellant's returns are only for income paid to appellant. Furthermore, the Form FTB 4803e, 2010 Head of Household Schedule, states that appellant was unmarried as of December 31, 2010. Clearly, appellant is mistaken in claiming that his 2010 return was submitted as married filing jointly. The NOA assessing California taxes resulting from the IRS adjustments only addresses appellant and not his ex-spouse. Thus, there is no conceivable basis for shifting any portion of his 2010 tax liability to his ex-spouse.

Issue 4 - Is appellant eligible for tax amnesty relief?

Appellant asks that he be permitted to participate in an amnesty program and attached to his appeal documentation about respondent's 2010 California Voluntary Compliance Initiative 2 (VCI 2). Pursuant to section 19761, the VCI 2 program was conducted from August 1, 2011, to October 31, 2011, inclusive. Section 19761(b) is clear: "This initiative shall apply to tax liabilities attributable to the use of abusive tax avoidance transactions [ATATs] and to unreported income from the use of offshore financial arrangements for taxable years beginning before January 1, 2011."

Appellant's 2010 return was adjusted to eliminate $41,845 in Schedule C business losses resulting in additional tax and interest. None of the adjustments to appellant's 2010 return involved ATATs or unreported income from offshore financial arrangements. Thus, appellant was not eligible for the amnesty program.

HOLDINGS

1. Appellant has not established error in respondent's assessment of additional tax and interest based on federal adjustments for 2010.
2. Appellant received sufficient legal notification of respondent's adjustments for 2010.
3. Appellant is liable for the entire amount of the deficiency and interest proposed to be assessed for 2010.
4. Appellant is not eligible for tax amnesty relief for 2010.

DISPOSITION

The accuracy-related penalty and any interest associated therewith shall be reversed in full (consistent with respondent's concession); in all other respects, respondent's action is sustained in full.

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Neil Robinson
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Neil Robinson
Administrative Law Judge

We concur:

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Grant S. Thompson
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Grant S. Thompson
Administrative Law Judge

DocuSigned by:
Sara A Hosey
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Sara A. Hosey
Administrative Law Judge