

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18010909
RANDALL L. ABBOTT)
) Date Issued: April 8, 2019
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OPINION

Representing the Parties:

For Appellant: Randall L. Abbott

For Respondent: Anne Mazur, Specialist

For Office of Tax Appeals: Matthew D. Miller, Tax Counsel III

S. HOSEY, Administrative Law Judge: Pursuant to California Revenue and Taxation Code (R&TC) section 19045,¹ Mr. Randall L. Abbott (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing assessments of additional tax of \$22,575, penalties totaling \$4,515, and interest for the 2012 tax year, and additional tax of \$6,269, penalties of \$1,253.80, and interest for the 2013 tax year.

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

ISSUES

1. Has appellant shown error in FTB’s proposed assessments, which are based on federal determinations?
2. Has appellant demonstrated that the accuracy-related penalties should be abated?

¹ Unless indicated otherwise, all “Section” references are to sections of the California Revenue and Taxation Code.

FACTUAL FINDINGS

1. Appellant filed a timely 2012 California income tax return, reporting California adjusted gross income (AGI) of -\$26,949, and tax of \$0.
2. Appellant filed a timely 2013 California income tax return, reporting California AGI of -\$54,324 and tax of \$0.
3. The Internal Revenue Service (IRS) provided information to FTB indicating that the IRS increased appellant's 2012 and 2013 federal taxable income.
4. For the 2012 tax year, the IRS increased appellant's federal taxable income from -\$60,157 to \$280,985. The federal increase was based on the following adjustments (among others) that potentially would apply for California tax purposes: the addition of \$204,751 in other income, the allowance of a self-employment AGI adjustment of \$1,724, and the disallowance of: (1) \$27,608 in itemized deductions; (2) \$22,061 in Schedule C utilities expenses; \$27,756 in Schedule C other expenses; and (3) a \$44,464 net operating loss (NOL) carryover. The IRS assessed additional tax of \$80,251 and imposed an accuracy-related penalty of \$16,050.20.
5. For the 2013 tax year, the IRS increased appellant's federal taxable income from -\$80,537 to \$110,274. The federal increase was based on the following adjustments (among others) that potentially would apply for California tax purposes: the disallowance of: (1) \$19,613 in itemized deductions; (2) \$5,651 in Schedule C meals and entertainment expenses; (3) \$27,705 in Schedule C other expenses; (4) \$21,902 in Schedule C office expenses; (5) \$12,620 in Schedule C car and truck expenses; (6) \$8,062 in Schedule C travel expenses; (7) \$23,090 in Schedule C utilities expenses; and (8) a \$53,357 NOL carryover.² The IRS assessed additional tax of \$33,312 and imposed an accuracy-related penalty of \$6,662.40.
6. There is no evidence that the IRS cancelled or reduced its assessment for either year. According to appellant's 2012 and 2013 federal account transcripts, the IRS closed its examination for both tax years on February 29, 2016, and the IRS assessments became final federal determinations. Appellant did not notify FTB of the federal adjustments.

² As a result of these adjustments, the IRS allowed a self-employment AGI adjustment of \$4,571.

7. Based on the federal adjustments, on February 2, 2017, FTB issued Notices of Proposed Assessment (NPA) to appellant for 2012 and 2013.
8. The 2012 NPA increased appellant's taxable income by \$320,375. The increase was due to disallowed Schedule C utilities (\$22,061), disallowed Schedule C other expenses (\$27,756), disallowed itemized deductions (\$26,708), unreported other income (\$204,751), disallowed NOL carryover (\$44,664), a self-employment AGI adjustment (-\$1,724) and allowance of the standard deduction (-\$3,841),³ The NPA proposed additional tax of \$22,575 and an accuracy-related penalty of \$4,515, plus applicable interest.
9. The 2013 NPA increased appellant's taxable income by \$168,923, from -\$73,037 to \$95,886. The increase was due to disallowed Schedule C expenses (\$108,030), disallowed itemized deductions (\$18,713), disallowed NOL carryover (\$50,657), self-employment AGI adjustment (\$4,571), and allowance of the standard deduction (-\$3,906). The NPA proposed additional tax of \$6,269 and an accuracy-related penalty of \$1,253.80, plus applicable interest.
10. Appellant timely protested the NPA, asserting that he disagreed with the proposed assessments and the federal determinations. His protest stated, in part: "I do not agree with proposed assessments because I don't agree with IRS determinations and was not afforded [a] proper opportunity to respond." Appellant also stated that he had retained a tax consulting firm to address the federal determinations.
11. FTB sent a letter to appellant acknowledging his protest letter. In the letter, FTB indicated that if appellant had additional information he wanted FTB to consider, he should provide such information. When FTB did not receive a response, it issued Notices of Action (NOA) on June 10, 2015, for each of the years at issue, affirming the proposed assessments.
12. This timely appeal followed. In his two-sentence appeal letter, appellant states: "I have no idea where these amounts . . . come from and why it said I [owe] them? I [am] at a total loss."

³ Both the 2012 and 2013 NPAs explained that the FTB allowed the standard deduction, instead of itemized deductions, because after the adjustments were applied, the applicable standard deduction exceeded the allowable itemized deductions.

13. This matter was originally scheduled for an oral hearing on February 28, 2019. Appellant, however, did not complete and return the Response to Notice of Oral Hearing as requested, so the matter is being decided based upon the written record in this appeal.

DISCUSSION

1. Has appellant shown error in FTB’s proposed assessments, which are based on federal determinations?

R&TC section 18622(a) provides that a taxpayer shall either concede the accuracy of a federal determination or state wherein it is erroneous. A deficiency determined based on a federal audit report is presumptively correct, and the taxpayer bears the burden of proving that the determination is erroneous. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509; *Appeal of Brockett*, (86-SBE-109) 1986 WL 22731.) Unsupported assertions are not sufficient to satisfy a taxpayer’s burden of proof with respect to a determination based on a final federal action. (*Appeal of Magidow*, (82-SBE-274) 1982 WL 11930.) It is well-established that the failure of a party to introduce evidence that is within his or her control gives rise to the presumption that, if provided, such evidence would be unfavorable. (*Appeal of Cookston*, (83-SBE-048) 1983 WL 15434.)

Here, FTB proposed assessments of additional tax based on federal adjustments for the 2012 and 2013 tax years. Appellant’s 2012 and 2013 federal account transcripts show that the federal adjustments are final and there are no pending claims or adjustments listed in either transcript. Appellant was provided with an opportunity to provide evidence showing error in FTB’s determination. However, appellant has not presented any argument or evidence establishing error in the federal adjustments or in the FTB’s determinations based thereon.

Therefore, we conclude that appellant has not satisfied his burden of showing error in the final federal adjustments or overcome the presumption of correctness in the FTB’s determinations based on the final federal adjustments.

2. Has appellant demonstrated that the accuracy-related penalties should be abated?

When FTB proposes a penalty based on a federal penalty determination, the FTB’s determination is presumptively correct. (*Appeal of Abney*, (82-SBE-104) 1982 WL 11781.)

Revenue and Taxation Code section 19164, which incorporates provisions of the Internal Revenue Code (IRC) section 6662, provides for an accuracy-related penalty of 20 percent of the applicable underpayment. IRC section 6662(b) provides, in part, that the penalty applies to the portion of the underpayment attributable to: (1) negligence or a disregard of rules and regulations, or (2) any substantial understatement of income tax. (IRC, § 6662(b).) The IRC defines “negligence” to include “any failure to make a reasonable attempt to comply” with the provisions of the code. (IRC, § 6662(c).) The term “disregard” includes “careless, reckless, or intentional disregard.” (*Ibid.*) IRC section 6662 provides that, for an individual taxpayer, a substantial understatement of tax exists if the amount of the understatement exceeds the greater of 10 percent of the tax required to be shown on the return or \$5,000. (IRC, § 6662(d)(1).) “Understatement” is the excess of the amount required to be shown on the return for the taxable year over the amount of the tax imposed which is shown on the return, reduced by any rebates. (IRC, § 6662(d)(2).)

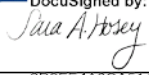
Appellant has provided no argument or evidence against the proposed accuracy-related penalties. Further, appellant’s 2012 and 2013 federal account transcripts show no indication that the federal accuracy-related penalties have been revised or abated. Accordingly, appellant has failed to satisfy his burden of showing that FTB improperly imposed the accuracy-related penalties based on the federal adjustments, or that the penalties should be abated.

HOLDINGS

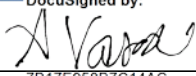
1. Appellant has not shown error in FTB’s determination or the federal adjustments on which it is based.
2. Appellant has not demonstrated that the accuracy-related penalties should be abated.

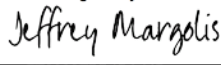
DISPOSITION

FTB’s action is sustained.

DocuSigned by:

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Sara A. Hosey
Administrative Law Judge

We concur:

DocuSigned by:

7B17E958B7C14AC
Amanda Vassigh
Administrative Law Judge

DocuSigned by:

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Jeffrey Margolis
Administrative Law Judge