

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18011387
DEBRA ROJAS)
) Date Issued: May 8, 2019
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OPINION

Representing the Parties:

For Appellant: Debra Rojas
For Respondent: Bradley J. Coutinho, Tax Counsel

J. JOHNSON, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, appellant Debra Rojas appeals an action by the respondent Franchise Tax Board (FTB) in denying her claim for refund of \$1,101.36,¹ consisting of additional tax of \$665, an accuracy-related penalty of \$133, and interest for the 2011 tax year.

Appellant waived her right to an oral hearing.² Therefore, this matter is decided based on the written record.

ISSUES

- 1. Whether appellant has shown error in the FTB’s assessment of additional tax, which is based on a federal determination.
- 2. Whether appellant has shown that the accuracy-related penalty should be abated.

FACTUAL FINDINGS

- 1. Appellant filed a timely 2011 California tax return, reporting taxable income of \$16,480.

¹ The exact amount of the refund is not clearly stated by the parties. The amount listed here is the aggregate of all payments received by respondent to satisfy appellant’s 2011 tax year liability pursuant to the Notice of Proposed Assessment, discussed below.

² Appellant requested an oral hearing in this matter, but failed to respond to a hearing notice asking her to confirm the scheduled hearing date. Subsequent efforts to reschedule the hearing by the Office of Tax Appeals (OTA) were unsuccessful.

2. The FTB received information from the Internal Revenue Service (IRS) that showed adjustments were made to appellant's federal return based on unreported gambling income of \$14,000. The federal adjustments resulted in additional tax assessed at the federal level of \$2,100, and the imposition of an accuracy-related penalty.
3. The FTB issued a Notice of Proposed Assessment (NPA) to appellant, increasing her taxable income to \$30,480 (\$16,480 originally reported, plus \$14,000 in gambling income). Based on a resulting revised California adjusted gross income (AGI) amount, the NPA removed appellant's nonrefundable renter's credit. The NPA proposed an additional tax of \$665 and an accuracy-related penalty of \$133. Appellant did not protest the NPA, and the NPA became final.
4. The FTB then issued appellant an Income Tax Due Notice, reflecting a balance due of \$872. The liability for the 2011 tax year was thereafter partially satisfied by overpayments from the 2013 and 2014 tax years. The remainder of the outstanding balance was paid through an Earning Withholding Order for Taxes.
5. Appellant filed an amended 2011 California tax return, which the FTB treated as a claim for refund after full payment of the outstanding liability was made. The amended return changed appellant's filing status from single to Head of Household (HOH), and made various changes with the provided explanation that the return was amended to "correct itemized deductions errors." The return reported taxable income of \$22,792, and claimed a refund due of \$64.
6. The FTB responded by letter, informing appellant that it was denying her claim for refund. The letter stated that the amended return does not match federal information, including her filing status and reported federal AGI, and rejecting other various claimed changes. The FTB affirmed its position as shown on its NPA, and this timely appeal followed.
7. A conference was held in this matter on appeal, at which appellant confirmed that the issues on appeal are the increase in taxable income based on the gambling income adjustment reported by the IRS, and the resulting accuracy-related penalty.³ Appellant indicated that she would attempt to acquire documentation to substantiate unclaimed

³ Among the items discussed at the conference and dismissed as issues were various adjustments to itemized deductions and taxable income and appellant's claim of the HOH filing status on her amended return, and statements regarding the 2013 and 2014 tax years made in her brief on appeal.

gambling losses to offset the unreported gambling income.⁴ Appellant did not provide any additional documentation.

DISCUSSION

Issue 1: Additional Tax

R&TC section 18622(a) provides that taxpayers shall either concede the accuracy of a federal determination or state wherein it is erroneous. A deficiency determination 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, 514; *Appeal of Brockett* (86-SBE-109) 1986 WL 22731.)

Here, the FTB proposed an assessment of additional tax based on an increase in appellant's federal AGI. The federal adjustment is based on income reported as received by appellant during the tax year but not included in appellant's reported income on her return. Appellant has the burden of proving error in the FTB's proposed assessment, or the federal adjustment upon which it is based.

Appellant has not disputed that she received the unreported gambling income, nor has she argued that it does not constitute taxable income. Instead, appellant contends that she has unreported gambling losses to offset the income and that she should be entitled to some relief based on the fact that she cared for her parent financially during the tax year.⁵ The FTB agreed to consider any evidence appellant would be able to provide. Appellant did not, however, provide any additional documentation or information.

The federal adjustment which imposed additional tax based on the unreported income has not been subsequently revised. Accordingly, appellant has not shown error in the federal adjustment, and she has not shown error in respondent's proposed assessment, which is based on that federal adjustment.

⁴ Appellant explained at the conference that she claimed the HOH filing status on her amended return because she cared for her parent during the year. The FTB explained that she must claim the same filing status on her state return as she claimed on her federal return, but it would consider an exemption credit if appellant provided additional documentation.

⁵ As indicated in Factual Finding #7 above, a conference was held in this matter which clarified appellant's arguments on appeal, and the subsequent Conference Minutes and Orders requested evidence to support these contentions.

Issue 2: Accuracy-Related Penalty

Based on the adjustments at the federal level, the FTB imposed an accuracy-related penalty. R&TC section 19164 generally incorporates the provisions of IRC section 6662 and imposes an accuracy-related penalty of 20 percent of the applicable underpayment. As relevant here, the penalty applies to any portion of an underpayment attributable to negligence or disregard of rules and regulations. (IRC, § 6662(b)(1).)

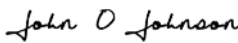
The federal imposition of the accuracy-related penalty was based on a finding of negligence.⁶ Accordingly, the FTB determined that the penalty also applied for California purposes on the basis of negligence. Appellant has not provided any evidence or argument to rebut this determination, such as a showing of reasonable cause or that she acted in good faith, and we therefore sustain the FTB's imposition of the accuracy-related penalty. (See IRC, § 6664(c)(1); Treas. Regs. §§ 1.6664-1(b)(2) & 1.6664-4; see also IRC, § 6662(d)(2)(B).)

HOLDINGS

1. Appellant has not shown error in the FTB's assessment of additional tax.
2. The accuracy-related penalty is properly imposed.

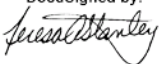
DISPOSITION

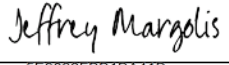
Respondent's action in denying appellant's claim for refund for the 2011 tax year is sustained.

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John O. Johnson
Administrative Law Judge

⁶The accuracy-related penalty may also be imposed based on a substantial understatement; however, that provision does not apply at either the state or federal level under these facts since the amount of the understatement at both levels does not exceed \$5,000. (See IRC, § 6662(b)(2) & (d)(1); R&TC, § 19164.)

We concur:

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Teresa A. Stanley
Administrative Law Judge

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Jeffrey I. Margolis
Administrative Law Judge