

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)	OTA Case No. 18032541
)	
MICHAEL BRADFORD AND)	Date Issued: May 7, 2019
)	
MUTSUMI BRADFORD)	
)	

OPINION

Representing the Parties:

For Appellants: Michael Bradford and Mutsumi Bradford

For Respondent: Jean M. Cramer, Tax Counsel IV

For Office of Tax Appeals: Tom Hudson, Tax Counsel III

D. BRAMHALL, Administrative Law Judge: Pursuant to California Revenue and Taxation Code (R&TC) section 19045,¹ appellants Michael Bradford and Mutsumi Bradford appeal from the action of the Franchise Tax Board (FTB) proposing an assessment of \$32,547.00 in additional tax and a late filing penalty of \$8,136.75 for 2010, and \$7,213.00 in additional tax and a late filing penalty of \$1,803.25 for 2011, plus applicable interest for both tax years.

Appellants waived their right to an oral hearing and therefore this matter is being decided based on the written record.

ISSUES

1. Have appellants shown any error in the proposed assessments of additional tax, which were based on final federal determinations, for 2010 and 2011?
2. Have appellants established that their failure to timely file tax returns for 2010 and 2011 was due to reasonable cause and not willful neglect?

¹ Unless otherwise indicated, all statutory references (“section” and “§”) refer to sections of the California Revenue and Taxation Code (R&TC) as they existed in the tax years on appeal.

FACTUAL FINDINGS

1. Appellants filed their California income tax return (Form 540) for 2010 on August 19, 2014, more than three years after the due date. Appellants filed their 2011 tax return on September 29, 2014, more than two years after the due date.
2. Subsequently, the Internal Revenue Service (IRS) audited appellants' federal income tax returns for 2010 and 2011. Pursuant to the audit, the IRS made adjustments to appellants' wages, state refunds, Schedule A, Schedule C, Schedule E, and to their exemptions. Appellants did not notify FTB of the federal adjustments or the final federal determination, but FTB received a copy of a United States Tax Court decision dated November 13, 2015 concerning these years. The court's decision upheld "the agreement of the parties" with respect to appellants' federal income taxes for the 2010 and 2011 tax years (i.e., the court order affirmed a stipulated agreement between appellants and the Commissioner of the IRS).
3. Appellants' federal Account Transcripts for the 2010 and 2011 tax years confirm the information contained in the court order. IRS Form 5278 (Statement of Income Tax Changes, also known as the "Revenue Agent Report" or "RAR") and federal Form 4549B (Income Tax Examination Changes) detail and confirm the federal determination shown in the court order.
4. On June 8, 2017, FTB issued Notices of Proposed Assessment (NPAs) concerning appellants' 2010 and 2011 tax years, based on this federal information. These NPAs followed the federal adjustments as applicable under California law. For 2010, the NPA increased appellants' taxable income by \$336,657.00, proposed to assess additional tax of \$32,547.00, and imposed a late filing penalty of \$8,136.75. For 2011, the NPA increased appellants' taxable income by \$68,916.00, proposed to assess additional taxes of \$7,213.00, and imposed a late filing penalty of \$1,803.25.
5. By letter dated August 6, 2017, appellants protested the NPAs, stating that they had no idea where the numbers came from and requested that FTB provide supporting information.
6. On February 20, 2018, FTB issued a Notice of Action that affirmed the proposed assessments for both tax years.
7. Appellants then filed this timely appeal.

DISCUSSION

Issue 1 - Have appellants shown any error in the proposed assessments of additional tax, which were based on final federal determinations, for 2010 and 2011?

R&TC section 18622(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 the 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.) Unsupported assertions are not sufficient to satisfy an appellant's burden of proof. (*Appeal of Aaron and Eloise Magidow*, 82-SBE-274, Nov. 17, 1982; *Appeal of James C. and Monablance A. Walshe*, 75-SBE-073, Oct. 20, 1975.) A taxpayer's failure to produce evidence that is within his or her control gives rise to a presumption that such evidence is unfavorable to the taxpayer's case. (*Appeal of Don S. Cookston*, 83-SBE-048, Jan. 3, 1983.)

In this appeal, appellants have not provided any evidence showing an error in the proposed assessments for the 2010 and 2011 tax years. Appellants have not identified any specific disagreement with the federal determinations, nor have they provided any evidence indicating that the federal determinations were erroneous. FTB has provided a copy of the decision of the United States Tax Court concerning the years at issue and that decision states that it was based on an agreement between appellants and the Commissioner of Internal Revenue. The tax court's decision constitutes a final federal determination.² FTB has provided a copy of appellants' federal Account Transcript for 2010 and 2011, as well as the Revenue Agent Report and Form 4549B (Income Tax Examination Changes). These federal documents confirm the finality of the federal determination upon which FTB's proposed assessments were based.

Appellants have merely requested an explanation of the proposed assessments. They have in no instance explained any specific disagreement with FTB's adjustments. FTB has replied to their request by providing various charts showing the details of the federal determination, comparing the federal determination to the amounts originally reported on appellants' California income tax returns, and showing the impact of the federal adjustments on appellants' California income taxes. There is no information or evidence in the record that

² Cal. Code Reg., title 18, § 19059(e).

provides us with any legal grounds to overturn or modify the proposed assessments, so they must be affirmed.

Issue 2 - Have appellants established that their failure to timely file tax returns for 2010 and 2011 was due to reasonable cause and not willful neglect?

California law provides for a penalty for the failure to file a valid return on or before the due date, unless it is shown that the failure was due to reasonable cause and not due to willful neglect. (R&TC § 19131.) The penalty is computed at five (5) percent of the tax due for every month that the return is late, up to a maximum of 25 percent of the tax. (R&TC § 19131(a).) Here, the late filing penalty appears to have been correctly calculated and appellants have not shown any error in the computation method.

The burden is on the taxpayer to establish reasonable cause for the failure to timely file. (*Appeal of M.B. and G.M. Scott*, 82-SBE-249, Oct. 14, 1982.) To establish reasonable cause, the taxpayer must show that the failure to file timely returns occurred despite the exercise of ordinary business care and prudence, or that cause existed as would prompt an ordinary intelligent and prudent businessman to have so acted under similar circumstances. (*Appeal of Stephen C. Bieneman*, 82-SBE-148, July 26, 1982; *Appeal of Howard G. and Mary Tons*, 79-SBE-027, Jan. 9, 1979.) Each taxpayer has a personal, non-delegable obligation to file a tax return by the due date. (*United States v. Boyle* (1985) 469 U.S. 241.)


In this appeal, there is no dispute that appellants' tax returns were filed after the deadline. Appellants have not addressed this issue or offered any reason or explanation for their failure to file timely tax returns for 2010 and 2011. There is no evidence in the record on appeal that suggests the existence of a reasonable cause. Therefore, we have no legal grounds to abate the late filing penalty for either year on appeal.

HOLDING

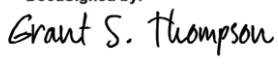
1. Appellants have not shown any error in the proposed assessments for tax years 2010 and 2011.
2. Appellants have not shown that they are entitled to abatement of the late filing penalties.


DISPOSITION

FTB's proposed assessments are sustained.

DocuSigned by:

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Douglas Bramhall
Administrative Law Judge

We concur:

DocuSigned by:

FC572D5881AE41B...
Grant S. Thompson
Administrative Law Judge

DocuSigned by:

8B585BFAC08946D...
Linda C. Cheng
Administrative Law Judge