

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18032454
FARHAD YAZDINIAN) Date Issued: April 29, 2019
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OPINION

Representing the Parties:

For Appellant: Charles Kolstad, Attorney
For Respondent: Bradley J. Coutinho, Tax Counsel
Marguerite Mosier, Tax Counsel IV

D. BRAMHALL, Administrative Law Judge: Pursuant to California Revenue and Taxation Code (R&TC) section 19047, Farhad Yazdininian (appellant) appeals an action by the respondent, Franchise Tax Board (FTB), proposing \$1,720 of additional tax, a \$344 accuracy-related penalty and applicable interest, for the 2003 tax year.

Office of Tax Appeals Administrative Law Judges Douglas Bramhall, Sara A. Hosey, and Daniel K. Cho held an oral hearing for this matter in Los Angeles, California, on March 19, 2019. At the conclusion of the hearing, the record was closed, and this matter was submitted for decision.

ISSUE¹

Whether FTB issued its proposed assessment within an applicable statute of limitations.

¹ The parties stipulated as follows: “The parties agree that should FTB prevail on the statute of limitation issue, appellant agrees to pay the tax and penalt[y] assessed.”

FACTUAL FINDINGS

1. Appellant and Mojgan Yazdianian² (collectively, the taxpayers) filed their 2003 California return (Form 540) with a “married filing jointly” status on April 15, 2004.³
2. On June 11, 2015, FTB received information from the Internal Revenue Service (IRS) that it had audited the taxpayers’ 2003 federal return and made adjustments increasing their income (unreported interest income), increasing Schedule E rental income, increasing Schedule E expense deductions, allowing a foreign tax credit, and disallowing Schedule A deductions to the extent they exceeded the maximum amount allowed. According to appellant’s 2003 IRS account transcript (transcript), these adjustments resulted in an assessment, on June 8, 2015, of additional tax and an accuracy-related penalty.
3. Based on this federal information, FTB issued a Notice of Proposed Assessment (NPA) dated September 20, 2016, reflecting the California law impact of the federal adjustments and proposed additional tax of \$1,720 and a \$344 accuracy-related penalty, plus applicable interest.
4. Taxpayers timely protested the NPA on November 1, 2016. In their protest letter, taxpayers argued that FTB mailed the NPA outside all applicable statutes of limitations.
5. On February 5, 2018, FTB issued a Notice of Action affirming the proposed assessment.
6. This timely appeal followed.

DISCUSSION

When the IRS makes changes or corrections to a taxpayer’s return, the taxpayer must report each change or correction to FTB within six months from the final federal determination date and either concede the accuracy of the federal determination or prove the federal changes are erroneous. (R&TC, § 18622(a).) An FTB deficiency assessment that is based on a federal audit report is presumed to be correct. (*Appeal of Magidow*, (82-SBE-274) 1982 WL 11930.)

Pursuant to R&TC section 19059, if a taxpayer is required to report a change or correction by the IRS and the taxpayer or IRS reports that change within six months after the

² Taxpayers filed a joint return for their 2003 tax year; however, only Mr. Yazdianian filed the appeal.

³ Taxpayers’ return was accepted as filed, with tax fully paid. An estimated tax penalty was imposed and paid as well. Since the only issue in this appeal relates to the assessment statute of limitations, return details are omitted from discussion.

final federal determination, an NPA may be mailed to the taxpayer within two years from the date when the notice is filed with FTB.⁴

Appellant's argument in this appeal is not with FTB's proposed assessment or penalty per se. Rather, his argument is that for tax year 2003, all federal statutes of limitation for the assessment of additional tax had expired before FTB issued its proposed assessment. Appellant's representative asserted that appellant participated in the 2011 IRS Offshore Voluntary Disclosure Initiative and pursuant to the terms of that program, appellant had to agree to voluntarily pay additional amounts for several years, including 2003, despite the statute of limitations for such year having expired.⁵ Based on that view, appellant argues that the additional payment made to the IRS in connection with 2013 is not a tax payment since no additional tax could be assessed, but instead is an overpayment as defined by Treasury Regulation section 301.6401(a)(1). As such, appellant asserts there was no final federal determination for the 2003 tax year and thus no reporting requirement under R&TC section 18622(a), and without a reporting requirement the extended statute of limitations provided under R&TC section 19059 is inapplicable to the 2003 tax year and thus the NPA is invalid.⁶

FTB argues that there was a final federal determination for 2003, that it received notice of that determination from the IRS on June 11, 2015, a date within six months of the IRS assessment on June 8, 2015, and that its NPA issued on September 20, 2016, was within the statute of limitations provided under R&TC section 19059 (two years from the date of the federal determination).

The record in this appeal includes appellant's 2003 tax year transcript. Such a transcript reflects the official actions of the IRS with respect to a taxpayer's return and serves as a valid record of any assessment of tax, interest, and penalty made. (See Treas. Reg. § 301.6203; Rev. Rul. 2007-21, 2007-1 C.B. 865.) The transcript includes entries coded 240 and 300, both having an entry date of 06-08-2015. According to the Internal Revenue Manual, Section 8A, these

⁴ Based on the original return filing date, the normal statute of limitations for an assessment of additional tax for 2003 would have been April 15, 2008 or 2010. (See R&TC, §§ 19057, 19058.)

⁵ Appellant provided a copy of a federal statute waiver for tax years 2008-2010, and asserted no waiver was provided for any earlier year.

⁶ Appellant's representative asserted that appellant's adjustments originated as a result of participation in the 2011 IRS Offshore Voluntary Compliance Initiative but no documentation as to the terms of that program were provided.

codes represent the assessment of a civil penalty and an additional tax or deficiency assessment by examination, respectively. Also included in the record is an IRS IMF MCC Transcript-Specific, dated 04-06-2018, which details every transaction documented by the IRS with respect to a return filed. This document also includes the transaction codes 240 and 300, showing the penalty and tax deficiency assessments on “06082015” with the additional designation code ASED03152016, indicating the IRS assessment statute expiration⁷ date of March 15, 2016, a date well after the posted assessment on June 8, 2015.

While we find appellant’s argument that no final federal determination can arise in a year when a federal assessment statute of limitation is closed for that year to be interesting, we find that there was a federal statute of limitations open for 2003⁸ as of the date of the federal assessment and that the IRS thus made a timely final federal determination to assess additional tax and penalty for that year. Accordingly, the statute of limitation specified in R&TC section 19059 applies to the facts of this appeal and FTB’s proposed assessment was timely issued.

HOLDING


FTB timely issued the proposed assessment for 2003 tax year, and appellant is therefore liable for the proposed assessment of tax which was based on federal adjustments and the accuracy-related penalty.

⁷ See, I.R.M. § 25.6.1.1.


⁸ Appellant asserts that no extension of the federal statute of limitations for 2003 was timely executed; however, we find the IRS account transcript to be persuasive. At the appeal hearing, appellant’s representative, in response to a specific question, offered no affirmative explanation to suggest any error with the transcript.

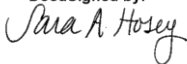
DISPOSITION

FTB's action for 2003 is sustained.

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Douglas Bramhall
Administrative Law Judge

We concur:

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Daniel K. Cho
Administrative Law Judge

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Sara A. Hosey
Administrative Law Judge