

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
BRAD CARSON

) OTA Case No. 18124123
)
) Date Issued: September 25, 2019
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)

OPINION

Representing the Parties:

For Appellant: Brad Carson

For Respondent: Anne Mazur, Specialist

A. ROSAS, Administrative Law Judge: Under Revenue and Taxation Code (R&TC) section 19045, appellant Brad Carson (Carson) appeals respondent Franchise Tax Board’s (FTB) action proposing an assessment of \$2,730 in additional tax and a delinquent-filing penalty of \$595.50, plus interest, for the 2014 tax year.¹ Carson waived his right to an oral hearing and therefore we decide this matter based on the written record.

ISSUES

1. Did Carson establish error in the proposed additional tax?
2. Did Carson establish that his failure to timely file a return for the 2014 tax year was due to reasonable cause and not due to willful neglect?

FACTUAL FINDINGS

1. Carson did not file a 2014 California return by the extension date of October 15, 2015. In December 2015, FTB issued a Demand for Tax Return. Carson and his spouse filed a return on February 15, 2016. They reported total taxable income of \$96,865.
2. The Internal Revenue Service (IRS) audited Carson’s 2014 federal tax return. In February 2017, the IRS provided FTB with information about this audit. The IRS

¹ FTB issued the Notice of Action to Carson and his spouse, but because she did not sign the appeal, this appeal is in Carson’s name only.

increased Carson's taxable income by \$26,482 and assessed additional tax and penalties. Carson did not report these federal changes to FTB.

3. FTB then examined Carson's California return and followed the federal adjustments. In March 2018, FTB issued a Notice of Proposed Assessment (NPA). As a result of following the federal adjustments, FTB increased Carson's taxable income by the same \$26,482 amount and proposed an additional tax of \$2,730 and a delinquent-filing penalty of \$595.50, plus interest. Carson timely protested the NPA.
4. In October 2018, FTB affirmed the NPA in a Notice of Action. Carson timely appealed.

DISCUSSION

Issue 1 – Did Carson establish error in the proposed additional tax?

When the IRS makes changes to a taxpayer's income, the taxpayer must report those changes to FTB. (R&TC, § 18622.) A taxpayer must either concede the accuracy of federal changes to a taxpayer's income or state where the changes are erroneous. (R&TC, § 18622(a).) Under well-settled law, there is a presumption of correctness when FTB bases its deficiency assessment on a federal adjustment to income, and a taxpayer bears the burden of proving FTB's determination is erroneous. (*Appeal of Brockett* (86-SBE-109) 1986 WL 22731; *Appeal of Lew* (78-SBE-073) 1978 WL 3876; *Appeal of Webb* (75-SBE-061) 1975 WL 3545.) The applicable burden of proof is by a preponderance of the evidence. (*Appeal of Estate of Gillespie*, 2018-OTA-052P, at p. 4; Cal. Code Regs., tit. 18, § 30219(c).)

Based on the federal adjustments, FTB increased Carson's taxable income by \$26,482 and proposed additional tax of \$2,730 and a delinquent-filing penalty, plus interest. Carson merely disputes and disagrees with FTB's determination, but he did not submit any documentary evidence in support of his position. Therefore, Carson did not prove that FTB's determination, based on a federal adjustment, is erroneous.

Issue 2 – Did Carson establish that his failure to timely file a return for the 2014 tax year was due to reasonable cause and not due to willful neglect?

FTB shall impose a delinquent-filing penalty when a taxpayer fails to timely file a return, unless it is shown that the late filing is due to reasonable cause and not due to willful neglect. (R&TC, § 19131.) A taxpayer has the burden of establishing reasonable cause. (*Appeal of Scott* (82-SBE-249) 1982 WL 11906.) As a general matter, for a taxpayer to establish that a failure to

act was due to reasonable cause, the taxpayer must show that the failure occurred despite the exercise of ordinary business care and prudence, or that cause existed as would prompt an ordinarily intelligent and prudent businessperson to have so acted under similar circumstances. (*Appeal of Bieneman* (82-SBE-148) 1982 WL 11825.)

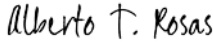
Carson did not file a 2014 California return by the automatic extension date of October 15, 2015. FTB issued a Demand for Tax Return in December 2015. Two months later, Carson filed his return on February 15, 2016. FTB imposed a delinquent-filing penalty of \$595.50. Carson did not submit any evidence to explain his failure to timely file. Therefore, we find that he failed to establish that his failure to timely file a 2014 return was due to reasonable cause and not due to willful neglect.

HOLDINGS

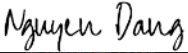
1. Carson did not establish error on the FTB’s part in proposing an additional tax based on a federal change.
2. Carson failed to establish that his failure to timely file a tax return for the 2014 tax year was due to reasonable cause and not due to willful neglect.


DISPOSITION

We sustain FTB’s action in full.

DocuSigned by:

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 Alberto T. Rosas
 Administrative Law Judge

We concur:

DocuSigned by:

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 Nguyen Dang
 Administrative Law Judge

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 Daniel K. Cho
 Administrative Law Judge