OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:	) OTA Case No. 18010754
THEODORE HARRISON III AND FONTEL HUDSON HARRISON	)

OPINION

Representing the Parties:

For Appellants: Theodore Harrison III

For Respondent: Brad Coutinho, Tax Counsel III

For Office of Tax Appeals: Sarah Fassett, Tax Counsel

A. VASSIGH, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, Theodore Harrison III and Fontel Hudson Harrison (appellants) appeal an action by the Franchise Tax Board (FTB or respondent) proposing $5,649.00 of additional tax, an accuracy-related penalty of $1,129.80, and applicable interest, for the 2008 tax year.

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

ISSUES

1. Whether appellants have shown error in respondent's proposed assessment, which is based on adjustments made by the Internal Revenue Service (IRS).
2. Whether appellants have established that the accuracy-related penalty should be abated.

FACTUAL FINDINGS

1. Appellants filed a timely joint 2008 California tax return (Form 540), reporting an overpayment of $2,525, which respondent refunded to appellants. Subsequently,

appellants filed an amended 2008 California tax return (Form 540X) on which appellants reported an overpayment of $2,654, which they claimed as a refund.[1]

2. The IRS provided information to respondent indicating that the IRS increased appellants' income and disallowed certain Schedule C expenses, itemized deductions; and student loan interest. The IRS adjustments increased appellants' federal AGI to $123,621, and their federal taxable income to $103,968. The IRS assessed additional tax of $21,708.00, plus interest, and imposed an accuracy-related penalty of $4,341.60.
3. The IRS assessment on March 16, 2015, was a final federal determination.
4. Appellants did not notify respondent of the federal adjustments.
5. Consistent with the federal adjustments, respondent issued a Notice of Proposed Assessment (NPA) which increased appellants' taxable income by $90,699,[2] from $23,010 to $113,709, and proposed additional tax of $5,649.00, an accuracy-related penalty of $1,129.80, and applicable interest.
6. Appellants timely protested the NPA by letter dated June 9, 2016, contending that "[t]he IRS assessment for 2008 is currently under appeal." Appellants asserted that they did not agree with the IRS assessment or respondent's subsequent proposed assessment.
7. Appellants entered into an Offer in Compromise (OIC) with the IRS for their 2008 federal tax balance.
8. Respondent notified appellants that the IRS's acceptance of appellants' OIC was not proof that the federal assessment had been adjusted. Respondent requested that appellants provide an IRS report showing a reduction or cancellation of the federal adjustments within 30 days.
9. When respondent did not receive a response, it issued a Notice of Action (NOA) affirming the NPA. This timely appeal followed.

[1] Respondent states that it erroneously processed appellants' 2008 tax returns in the reverse order as received, and issued a refund of $2,535, rather than a refund of $2,654. At the conclusion of this appeal, respondent will revise its records to reflect the processing of the returns in the order received, as well as refund/credit appellants with the $119 difference in the overpayment amounts (i.e., $2,654 - $2,535), with interest as provided by law.

[2] Respondent notes that as a result of a typographical error on the NPA, respondent disallowed $33,152, instead of $33,162, of one of the Schedule C deductions. Since respondent's error is in appellants' favor, we will not address it further.

DISCUSSION

Issue 1: Whether appellants have demonstrated error in the proposed assessment, which is based on a final federal determination.

When the IRS makes changes or corrections to an individual's tax return and the changes increase the amount of tax owed, the taxpayer must either concede the accuracy of the federal determination or prove that the federal adjustments are erroneous. (R&TC, § 18622(a).) It is well-settled law that a deficiency assessment based on a final federal determination is presumptively correct and that a taxpayer bears the burden of proving, with documentation or evidence, that the determination is erroneous. (*Appeal of Brockett* (86-SBE-109)1986 WL 22731; *Appeal of Thorpe* (87-SBE-072) 1987 WL 50200, citing *Todd v. McColgan* (1949) 89 Cal.App.2d 509.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof with respect to an assessment based on a federal action. (*Appeal of Magidow* (82-SBE-274) 1982 WL 11930.) The mere assertion of the incorrectness of a federal determination does not shift the burden to respondent to justify the deficiency assessment or its correctness. (*Appeal of Nichols* (80-SBE-064) 1980 WL 4994.) It is also well established that income tax deductions are a matter of legislative grace, and a taxpayer who claims a deduction has the burden of proving by competent evidence that he or she is entitled to that deduction. (See *New Colonial Ice Co. v. Helvering* (1934) 292 U.S. 435, 440.)

The record in this appeal shows that appellants' 2008 federal Account Transcript is final, and there are no pending claims or adjustments listed in the transcript. Appellants assert that respondent's proposed assessment is erroneous because the IRS's "levy is not sustained," leaving no underlying federal liability owed to the IRS for respondent to base the proposed assessment upon. It appears that appellants' argument is that their settlement to pay their federal tax liability cancelled the federal tax assessment upon which this proposed assessment was based. Appellants provided documents from the IRS dated between June of 2016 and April of 2017, which show that appellants made an OIC to the IRS, which was accepted. However, that only shows that appellants were given the opportunity to settle their federal tax liability by paying less than the full amount of the tax balance owed. Appellants have provided no documentation substantiating that the IRS reduced or cancelled the additional tax assessed for 2008. As such, because appellants have provided no evidence or documentation showing error in the final

federal assessment or in respondent's proposed assessment based on the final federal assessment, appellants have not satisfied their burden.

Issue 2: Whether appellants have demonstrated that the accuracy-related penalty should be abated.

Internal Revenue Code (IRC) section 6662, incorporated by R&TC section 19164, provides for an accuracy-related penalty of 20 percent of the applicable underpayment. IRC section 6662(b) provides, in relevant part, that the penalty applies to the portion of the underpayment attributable to any substantial understatement of income tax. A substantial understatement of tax exists if the understated amount exceeds the greater of 10 percent of the tax required to be shown on the return or $5,000. (IRC, § 6662(d)(1).) An "understatement" means 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 rebate. (IRC, § 6662(d)(2).) Respondent correctly calculated and imposed an accuracy-related penalty of 20 percent of the applicable underpayment in the amount of $1,129.80 (i.e., $5,649.00 x .20), since appellants' underpayment of $5,649 exceeded $5,000. When respondent imposes a penalty that is based on a federal audit, its determination is presumptively correct, and the burden is on the taxpayer to prove that it is erroneous. (*Appeal of Beadling* (77-SBE-021) 1977 WL 3831.)

Appellants have provided no argument or evidence establishing any basis to abate to the accuracy-related penalty and have not argued or shown error in respondent's determination to impose the accuracy-related penalty in accordance with the federal determination. Appellants' 2008 federal Account Transcript shows no indication that the federal accuracy-related penalty was revised or abated. Appellants do not provide any argument or evidence establishing that any exceptions apply. (IRC, § 6662(d)(2)(B); Treas. Reg. §§ 1.6662 6(c)(1), 1.6664 1(b)(2) & 1.6664 4.) Accordingly, appellants fail to show that the accuracy-related penalty should be abated.

HOLDINGS

1. Appellants have not established error in the proposed assessment of additional tax.
2. Appellants have failed to establish that the accuracy-related penalty should be abated.

DISPOSITION

Based on the foregoing, respondent's actions are sustained in full.

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Amanda Vassigh
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Amanda Vassigh
Administrative Law Judge

We concur:

DocuSigned by:
3CADA62FB4864CB...
Andrew J. Kwee
Administrative Law Judge

DocuSigned by:
Michael F. Geary
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Michael F. Geary
Administrative Law Judge

Date Issued: 12/18/2019