

3. On April 22, 2005, the bankruptcy court issued a discharge order.
4. FTB later received information from the Internal Revenue Service on August 7, 2008, showing that the Internal Revenue Service (IRS) increased appellants' 2000 federal taxable income by \$248,184.
5. Approximately a year later, FTB issued a Notice of Proposed Assessment (NPA or proposed assessment) on September 9, 2009, that increased appellants' California taxable income by \$236,424 to account for the following amounts, which were based on the federal adjustments: gross receipts \$58,996; miscellaneous expenses \$177,618; itemized deductions \$4,488; and one-half self-employment tax negative \$4,678.
6. The NPA set forth an additional tax of \$20,110, a late-filing penalty of \$5,027.50, and a post-amnesty penalty of \$3,390.77, plus applicable interest through September 9, 2009, of \$17,506.57.
7. Appellants filed a timely protest, the details of which are not in the appeal record.
8. Subsequently, FTB placed appellants' protest in pending status.
9. FTB sent appellants a letter dated September 26, 2018, which stated that FTB recently received information from the IRS showing that appellants' federal tax assessment (including a federal fraud penalty) for the 2000 tax year had been upheld.
10. FTB's letter dated September 26, 2018, also stated that there appeared to be no indication that the federal tax assessment (including the federal fraud penalty) had been cancelled or reduced.
11. FTB affirmed the NPA in an NOA dated May 24, 2019.
12. In response, appellants filed this timely appeal.

DISCUSSION

On appeal, appellants' only argument is that FTB's proposed assessment has been discharged in bankruptcy. FTB, however, asserts that OTA does not have jurisdiction to consider whether FTB's proposed assessment has been discharged in bankruptcy.

Bankruptcy courts have exclusive jurisdiction to determine whether a debt is nondischargeable under section 523(a)(2), (4), and (6) of the Bankruptcy Code (title 11 of the United States Code). Bankruptcy courts and state courts have concurrent jurisdiction to adjudicate the dischargeability of debts in the remaining classes. (*In re Aldrich* (Bankr. 9th Cir., 1983) 34 B.R. 776, 779.) OTA's predecessor, the California State Board of Equalization (BOE),

has held that it did not have subject matter jurisdiction to decide whether a personal income tax liability had been discharged in bankruptcy. (*Appeal of Smith* (81-SBE-145) 1981 WL 11870.) As successor to the powers and authority of the BOE, we conclude that OTA does not have jurisdiction to consider whether FTB’s proposed assessment was discharged in bankruptcy.

HOLDING

OTA does not have jurisdiction to consider whether the additional tax, penalties, and interest for the 2000 tax year were discharged in bankruptcy.

DISPOSITION

FTB’s action is sustained.

DocuSigned by:
Sara A. Hosey
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Sara A. Hosey
Administrative Law Judge

We concur:

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

DocuSigned by:
John O. Johnson
873D8797B9564E1
John O. Johnson
Administrative Law Judge

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