OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:	) OTA Case No. 18042886
PACITA I. PIO	) Date Issued: May 15, 2019

OPINION

Representing the Parties:

For Appellant: Pacita I. Pio

For Respondent: Joel M. Smith, Tax Counsel

For Office of Tax Appeals: Andrea Long, Tax Counsel

A. VASSIGH, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, Pacita I. Pio (appellant) appeals actions by the Franchise Tax Board (FTB or respondent) proposing $2,746 of additional tax and applicable interest for the 2011 tax year, and $757 of additional tax and applicable interest for the 2012 tax year.

Appellant waived her right to an oral hearing, and therefore the matter is being decided based on the written record.

ISSUE

Whether appellant has shown error in respondent's proposed assessments, which are based on federal adjustments by the Internal Revenue Service (IRS).

FACTUAL FINDINGS

1. On April 15, 2012, appellant filed a timely California Resident Income Tax Return (FTB Form 540) for 2011. Appellant reported California adjusted gross income (AGI) of $77,770, claimed total itemized deductions of $21,004, and a total tax of $1,702. After applying exemption credits of $417, appellant reported a tax due of $1,285.
2. In February of 2013, appellant filed an amended 2011 tax return (FTB Form 540X). Appellant decreased her California AGI from $77,770 to $19,222 and increased her

itemized deductions from $21,004 to $25,827, resulting in a taxable income of $0 and tax of $0. She explained in her amended return that she acquired a limited liability company (LLC) "to report miscellaneous income against corresponding expenses." Appellant signed her amended 2011 return on January 29, 2013. Appellant's amended and original 2011 returns were prepared by the same tax preparer. Respondent accepted the amended return as filed.

3. On February 11, 2013, appellant filed a timely Form 540 for 2012. Appellant reported California AGI of $16,039 and claimed total deductions of $7,682, resulting in taxable income of $8,357 and tax of $84. After applying exemption credits of $529, appellant reported a total tax liability of $0. Appellant's 2012 return was prepared under a different tax preparer name than the one who prepared her original and amended 2011 returns.[1] Respondent accepted the return as filed.
4. Respondent subsequently received information from the IRS indicating that the IRS made adjustments to appellant's 2011 and 2012 federal returns. The IRS increased appellant's taxable income by $73,691 and $43,326 for the 2011 and 2012 tax years, respectively.
5. Respondent correspondingly adjusted appellant's taxable income for the 2011 and 2012 tax years based on the federal adjustments and issued a Notice of Proposed Assessment (NPA) for each tax year.
6. Respondent issued an NPA dated March 22, 2016, for the 2011 tax year. The 2011 NPA increased appellant's reported taxable income from $0 to $73,691.[2] The 2011 NPA proposed an additional tax of $2,746, plus applicable interest.
7. Respondent issued an NPA dated March 22, 2016, for the 2012 tax year. The 2012 NPA increased appellant's reported taxable income from $8,357 to $50,907.[3] The 2012 NPA proposed an additional tax of $757, plus applicable interest.
8. On April 25, 2016, appellant protested the NPAs. She argued that her tax preparer created an LLC called "New Wave Knowledge, LLC" without her knowledge and that

[1] The 2011 original and amended returns were prepared by "CUTDTAX," while the 2012 return was prepared by "JM Tax Solutions, Inc.," though both preparers have the same address, including suite number.

[2] The revised taxable income was calculated based on the addition of $69 (taxable interest) + $3,574 (other income) + $58,548 (Sch E-Inc/Loss-Prtnrship/S Corps) + $11,500 (home mortgage interest).

[3] The revised taxable income was calculated based on the addition of $746 (other income) + $41,804 (Sch E-Inc/Loss-Prtnrship/S Corps). The California Schedule E adjustment is less than the federal adjustment because appellant claimed less of a loss on her state tax return.

the LLC had no economic activities. Appellant stated that her tax preparer has passed away and requested that respondent deactivate the LLC and waive the proposed assessment.

9. On April 24, 2017, respondent informed appellant that its proposed assessments were based on information received from the IRS and reflected the amounts that should have been reported on her California returns. Respondent gave appellant until May 25, 2017, to provide any new information to support her position.

10. Having received no response, respondent issued a Notice of Action for each tax year at issue on January 2, 2018, affirming each of the NPAs.

11. Appellant filed this timely appeal.

DISCUSSION

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 law that a deficiency determination based on a federal audit report is presumptively correct and that the taxpayer bears the burden of proving that the determination is erroneous. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509, 514; *Appeal of Sheldon I. and Helen E. Brockett*, 86-SBE-109, 1986 WL 22731.)[4] R&TC section 17041(a) provides, in pertinent part, that tax shall be imposed upon the entire taxable income of every California resident. R&TC section 17071 incorporates Internal Revenue Code section 61, which defines "gross income" as including "all income from whatever source derived." Income tax deductions are a matter of legislative grace and a taxpayer who claims a deduction has the burden of proving by evidence that she is entitled to that deduction. (See *New Colonial Ice Co. v. Helvering* (1934) 292 U.S. 435, 440; *Appeal of Michael E. Myers*, 2001-SBE-001, 2001 WL 37126924.)

Appellant asserts that she disagrees with the proposed assessments. However, appellant has provided no evidence or argument demonstrating error in the proposed assessments of additional tax for the 2011 or 2012 tax years. Instead, appellant asserts that her tax preparer created an LLC without her knowledge and that she did not in fact have a business during the tax years at issue. Appellant also asserts that her tax preparer has since passed away and that she is unable to pay the assessed tax due to financial hardship.

[4] Precedential decisions of the Board of Equalization (BOE) may generally be found at its website: <http://www.boe.ca.gov/legal/legalopcont.htm> (as of March 29, 2019).

Appellant's amended 2011 return expressly states that she amended her 2011 return because she "acquired a limited liability company with which to report miscellaneous income against corresponding expenses." Both appellant and her tax preparer signed her amended 2011 tax return under penalty of perjury, which indicates that appellant knew or should have known why she was amending her 2011 return. Similarly, appellant signed her 2012 return under penalty of perjury, which was prepared under a different tax preparer name.

Engaging the services of a tax preparer does not excuse appellant from the responsibility of reviewing her return with care and satisfying her tax obligations. Furthermore, a taxpayer is not excused from liability for the failure to report income or for claiming improper deductions on her return merely because she retained the services of a tax preparer. (*Bailey v. Commissioner* (1954) 21 T.C. 678, 687.) The duty of filing accurate returns cannot be avoided by placing responsibility upon an agent. The taxpayer still has a duty to read the tax return and ensure its accuracy. (*Ibid*.)

Appellant also requests relief from her 2011 and 2012 tax liabilities due to financial hardship. We have no authority to settle or compromise an income tax appeal. The Office of Tax Appeals' jurisdiction is limited to determining the correct amount of appellant's California personal income tax liability. (*Appeals of Fred R. Dauberger, et. al.*, 82-SBE-082, 1982 WL 11759.)[5]

Appellant has not argued and does not argue that the federal assessments upon which the FTB assessments are based are incorrect. Appellant's sole argument is that the tax preparer created this problem by setting up the LLC. However, relying on a tax preparer does not relieve appellant of her duty to review and file accurate tax returns. Accordingly, appellant has not satisfied her burden of showing error in either of the final federal assessments or overcoming the presumption of correctness in respondent's determinations, which were based on the final federal assessments.

[5] Respondent has provided information regarding its Offer in Compromise program and its installment agreement program to appellant in its opening brief. If, after the decision in this appeal becomes final, appellant is experiencing difficulties in paying her liabilities, she may contact respondent to determine whether she is eligible to participate in the Offer in Compromise program or whether she can enter into an installment payment agreement with respondent.

HOLDING

Appellant has not established error in the proposed assessments for either of the tax years at issue.

DISPOSITION

Respondent's actions are sustained in full.

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Amanda Vassigh
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Amanda Vassigh
Administrative Law Judge

We concur:

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John O Johnson
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John O. Johnson
Administrative Law Judge

DocuSigned by:
Daniel K. Cho
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Daniel K. Cho
Administrative Law Judge