

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 19105334
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C. PEREZ)
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OPINION

Representing the Parties:

For Appellant: C. Perez

For Respondent: Brian Werking, Tax Counsel III

D. BRAMHALL, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, C. Perez (appellant) appeals¹ actions by respondent Franchise Tax Board (FTB) denying his refund claims for \$4,009.74 (\$2,796 of additional tax, a late-filing penalty of \$699, and applicable interest) for the 2014 tax year, and \$4,650.52 (\$4,214 of additional tax and applicable interest) for the 2015 tax year.²

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

¹ Appellant filed a joint return with his spouse but is the sole appellant. References herein to appellant's returns refer to the joint returns filed by Mr. and Mrs. Perez for 2014 and 2015 for both federal and California income tax purposes.

² Appellant paid the proposed tax, penalty and interest of \$4,009.74 for 2014, and the proposed tax and interest of \$4,650.52 for 2015. In his Request For Appeal on OTA Form L-01, appellant indicated he was appealing not only FTB's Notices of Action for the tax years at issue, but also what he considered to be FTB's deemed denials of his refund claims for those same years. We note that shortly after appellant received FTB's Notices of Proposed Assessment for 2014 and 2015, he wrote two checks to FTB, one stating it was for "2014" for the full amounts due for that year and the other for "2015" also for the full amounts due for that year. FTB then issued separate protest correspondence for 2014 and 2015, both dated July 29, 2019, identifying appellant's payments as having been applied to his tax accounts for these tax years. We therefore view FTB's correspondence as confirming appellant's written intention, via the checks, to satisfy the requirements of R&TC section 19041.5(a)(1) (i.e., appellant's payments were not simply deposits used to suspend interest accrual but were used to satisfy his tax liabilities for purposes of converting this administrative action into a refund claim action). Accordingly, pursuant to R&TC section 19335, this appeal shall be treated as an appeal from FTB's denial of claims for refund of the amounts paid.

ISSUES

1. Has appellant established error in FTB's proposed assessments for 2014 or 2015, which are based upon final federal adjustments?
2. Has appellant established reasonable cause for the late filing of his 2014 California tax return?

FACTUAL FINDINGS

2014

1. Appellant and his spouse filed their 2014 California return on November 20, 2015, showing a balance due of \$116. FTB accepted the return as filed and imposed a late-filing penalty of \$529 and an estimated tax penalty of \$13.11. The total balance due of \$706.15 was paid on January 25, 2016.
2. The Internal Revenue Service (IRS) adjusted appellant's 2014 federal return to increase adjusted gross income by \$30,102, and to disallow a charitable deduction of \$280 and a personal property tax deduction of \$201.
3. FTB obtained information regarding the federal adjustment in the form of a FEDSTAR IRS Data Sheet. Based on this information, FTB issued a Notice of Proposed Assessment (NPA) that applied the federal adjustments to appellant's 2014 California return and proposed additional tax of \$2,796, and a late-filing penalty of \$699, plus interest.
4. Mr. and Mrs. Perez protested the NPA. FTB reviewed federal information showing that the IRS had neither canceled nor reduced its assessment.
5. FTB issued a Notice of Action affirming the NPA.
6. Appellant timely appealed.

2015

7. Appellant and his spouse timely filed their 2015 California return on April 15, 2016, showing a balance due of \$2,078. FTB accepted the return as filed and imposed an estimated tax penalty of \$34.53. The total balance due of \$2,111 was paid with the return on April 15, 2016.
8. The IRS adjusted appellant's 2015 federal return to increase adjusted gross income by \$40,528, and to disallow a medical expense deduction of \$871.

9. FTB obtained information regarding the federal adjustment in the form of a FEDSTAR IRS data sheet. Based on this information, FTB issued an NPA that applied the federal adjustments to appellant's 2015 California return but also disallowed all claimed medical expense deductions of \$4,776 and proposed additional tax of \$4,214, plus interest.
10. Mr. and Mrs. Perez protested the NPA. FTB reviewed federal information showing that the IRS had neither canceled nor reduced its assessment.
11. FTB issued a Notice of Action affirming the NPA.
12. Appellant timely appealed.

DISCUSSION

Issue 1. Has appellant established error in FTB's proposed assessments for 2014 or 2015, which are based upon final federal adjustments?

When the IRS makes changes to a taxpayer's income that increases the tax due for California personal income tax purposes, the taxpayer must report those changes to FTB. (R&TC, § 18622(a).) A taxpayer must either concede the accuracy of federal changes to a taxpayer's income or state where the changes are erroneous. (*Ibid.*) 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.) The applicable burden of proof is by a preponderance of the evidence. (*Appeal of Estate of Gillespie*, 2018- OTA-052P; Cal. Code Regs., tit. 18, § 30219(c).)

Here, appellant did not report the federal changes to FTB. Appellant concedes that he owes additional tax. However, appellant only argues that the amount proposed is incorrect since the California tax proposed is greater than the federal assessments resulting from the same adjustments.

FTB has established that the federal adjustments used as a basis for its proposed assessments apply under California law³ and that those adjustments have not been modified by the IRS. Further, FTB has correctly explained that the final federal income tax liability arising from the income and expense adjustments was offset by a federal credit for overpaid self-

³ See R&TC sections 17071 and 17201.

employment tax, a credit unavailable to appellant for California purposes since California does not impose a self-employment tax.

Appellant provided no evidence indicating that the IRS canceled or reduced his assessments for 2014 or 2015 nor that FTB's application of those federal adjustments was in error. Therefore, appellant did not prove that FTB's determinations, based on federal adjustments, are erroneous.

Issue 2. Has appellant established reasonable cause for the late filing of his 2014 California tax return?

R&TC section 19131 provides that FTB shall impose a late-filing penalty when a taxpayer fails to file a tax return on or before its due date unless the taxpayer establishes that the late filing was due to reasonable cause and was not due to willful neglect. The penalty is computed at five percent of the tax due, after allowing for timely payments, for every month that the return is late, up to a maximum penalty of 25 percent. The burden is on the taxpayer to establish reasonable cause for untimely filing. (*Appeal of Scott* (82-SBE-249) 1982 WL 11906.) Reasonable cause exists if it can be shown that the taxpayer acted as an ordinarily intelligent and prudent businessperson would have acted under similar circumstances. (*Appeal of Bieneman* (82-SBE-148) 1982 WL 11825; *Appeal of Tons* (79-SBE-027) 1979 WL 4068.)

We find that appellant filed his 2014 California tax return late. Appellant has not contested the computation of the penalty nor offered any explanation for why his return was filed late. Therefore, we find that appellant has failed to establish reasonable cause for the late filing of his 2014 California tax return.

HOLDINGS

1. Appellant has not established error in FTB’s proposed assessments for 2014 or 2015.
2. Appellant has not established reasonable cause to abate the 2014 late-filing penalty.

DISPOSITION

FTB’s actions are sustained in full.

DocuSigned by:

 CA2E033C0906484

 Douglas Bramhall
 Administrative Law Judge

We concur:

DocuSigned by:

 DC88A60D8C3E442

 Keith T. Long
 Administrative Law Judge

DocuSigned by:

 67F043D83EF547C

 Sheriene Anne Ridenour
 Administrative Law Judge

Date Issued: 5/22/2020