

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 19044669
F. WILSON)
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OPINION

Representing the Parties:

For Appellant: F. Wilson

For Respondent: Brian Werking, Tax Counsel III

A. ROSAS, Administrative Law Judge: Under Revenue and Taxation Code (R&TC) section 19045, appellant F. Wilson appeals respondent Franchise Tax Board’s actions proposing assessments for tax years 2013 (additional tax of \$973 plus interest) and 2014 (additional tax of \$3,652 plus interest).¹ Appellant waived the right to an oral hearing; therefore, we decide this matter based on the written record.

ISSUE

Did appellant establish error in respondent’s proposed additional taxes for tax years 2013 and 2014, which are based on federal changes?

FACTUAL FINDINGS

1. Appellant filed a 2013 California Resident Income Tax Return on March 19, 2014, and reported total tax of \$5.
2. Appellant and his spouse jointly filed their 2014 California Resident Income Tax Return on March 31, 2015, and reported total tax of \$1,067.
3. The Internal Revenue Service (IRS) examined appellant’s federal income tax returns for tax years 2013 and 2014. On September 26, 2016, the IRS assessed additional tax of

¹ Respondent issued the Notice of Action for tax year 2014 to appellant and his spouse, but because appellant’s spouse did not sign the appeal, this appeal is in appellant’s name only.

- \$6,518 and \$18,011 for tax years 2013 and 2014, respectively, and imposed an accuracy-related penalty for tax year 2014, plus interest.
4. On October 7, 2016, the IRS informed respondent of these federal adjustments and assessments.
 5. On May 21, 2018, respondent issued Notices of Proposed Assessment (NPAs), which made adjustments and proposed assessments based on the federal changes:
 - In the 2013 NPA issued to appellant, respondent increased appellant's taxable income by \$49,843 and proposed additional tax of \$973, plus interest.
 - In the 2014 NPA issued to appellant and his spouse, respondent increased their taxable income by \$52,388 and proposed additional tax of \$3,652, plus interest.
 6. Appellant protested the NPAs. Respondent informed appellant that, based on a review of recent federal information, the IRS had not cancelled or reduced the federal assessments. Respondent requested that appellant provide any additional information, including evidence that the IRS had reduced or cancelled its adjustments. Based on the evidence in the record, it does not appear that appellant provided any such information to respondent.
 7. On March 1, 2019, respondent issued Notices of Action for tax years 2013 and 2014 that affirmed the corresponding NPAs and proposed deficiency assessments.
 8. Appellant timely appealed.

DISCUSSION

When the IRS makes changes to a taxpayer's income, the taxpayer must report those changes to respondent. (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 respondent bases its deficiency assessment on a final federal determination, and a taxpayer bears the burden of proving respondent'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; Cal. Code Regs., tit. 18, § 30219(c).)

The IRS examined appellant's federal income tax returns for tax years 2013 and 2014. As a result of this examination, on September 26, 2016, the IRS assessed additional tax of \$6,518

and \$18,011 for tax years 2013 and 2014, respectively, and imposed an accuracy-related penalty for tax year 2014, plus interest.

Using the federal changes as a starting point and to the extent consistent with California law, respondent made corresponding adjustments and proposed assessments of additional tax. For tax year 2013, respondent increased appellant's taxable income by \$49,843 and proposed additional tax of \$973, plus interest. For tax year 2014, respondent increased appellant and his spouse's taxable income by \$52,388 and proposed additional tax of \$3,652, plus interest.

We do not address all of appellant's arguments because we do not believe they warrant any discussion;² as the United States Court of Appeals for the Tenth Circuit stated: "We need not waste judicial resources explaining once again why the [taxpayers] are subject to . . . tax laws, just like everyone else who lives in the United States." (*Sorenson v. O'Neill* (10th Cir. 2003) 73 Fed.Appx. 341, 343.) In addition, appellant did not submit any evidence that may help meet his burden of proof and that may show or tend to show error in either respondent's proposed assessments or the federal changes on which they are based. Lastly, appellant provided no evidence indicating whether the IRS had reduced or cancelled its adjustments. Therefore, appellant did not prove that respondent's proposed assessments, based on federal changes, are erroneous.

²The Office of Tax Appeals (OTA) has the statutory authority to impose a penalty of up to \$5,000 if it finds that an appeal before it has been instituted or maintained primarily for delay or that a taxpayer's position in the appeal is frivolous or groundless. (R&TC, § 19714; see also Cal. Code Regs., tit. 18, § 30217(a).) Although we do not impose that penalty in this proceeding, appellant's positions and conduct in this appeal suggest that such a penalty may be warranted in the future should he file another appeal with OTA raising the same or similar issues.

HOLDING

Appellant did not establish error in respondent’s proposed additional taxes for tax years 2013 or 2014, which are based on federal changes.

DISPOSITION

We sustain respondent’s action in full.

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Alberto T. Rosas
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Alberto T. Rosas
Administrative Law Judge

We concur:

DocuSigned by:
Jeffrey I. Margolis
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Jeffrey I. Margolis
Administrative Law Judge

DocuSigned by:
E. L. Ewing
2D8DE82EB66E4A6...
Elliott Scott Ewing
Administrative Law Judge

Date Issued: 5/20/2020