

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
S. SOLL AND L. SOLL

) OTA Case No. 20046087
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OPINION

Representing the Parties:

For Appellants: S. Soll

For Respondent: Anne Mazur, Specialist

K. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, S. Soll and L. Soll (appellants) appeal an action by the respondent Franchise Tax Board (FTB) proposing \$8,849 of additional tax, an accuracy-related penalty of \$1,769.80, a late-filing penalty of \$2,212.25, and applicable interest, for the 2008 tax year. Appellants also appeal an action by FTB proposing \$8,355 of additional tax, an accuracy-related penalty of \$1,671, a late-filing penalty of \$2,088.75, and applicable interest, for the 2009 tax year. During this appeal, FTB agreed to cancel the late-filing and accuracy-related penalties that it imposed on appellants for 2008 and 2009.

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

ISSUES

1. Whether the Office of Tax Appeals (OTA) has jurisdiction to consider whether the tax liabilities at issue were discharged in bankruptcy.
2. Whether appellants have demonstrated error in FTB’s proposed assessments for the 2008 and 2009 tax years, which are based on final federal determinations.

FACTUAL FINDINGS

1. Appellants filed an untimely joint California income tax return for the 2008 taxable year on September 15, 2010. Appellants filed an untimely joint California income tax return for the 2009 taxable year on May 19, 2011.
2. On July 12, 2012, appellants filed a petition for Chapter 13 bankruptcy in the U.S. Bankruptcy Court for the Central District of California. A bankruptcy discharge was ordered by the bankruptcy court on January 11, 2018. The Order of Chapter 13 Discharge states, in part, that: “Some debts are not discharged [including] debts for certain taxes specified in 11 U.S.C. §§ 507(a)(8)(C), 523(a)(1)(B), or 523(a)(2)(C) to the extent not paid in full under the plan”
3. On June 18, 2019, FTB received information that the IRS had adjusted appellants’ 2008 and 2009 federal returns. For 2008, the IRS increased appellants’ taxable income by \$153,726. For 2009, the IRS increased appellants’ taxable income by \$129,099. The IRS’s adjustments to appellants’ taxable income were based on various adjustments to appellants’ Schedule A itemized deductions and Schedule C business expense deductions. On June 10, 2019, the IRS assessed additional federal income tax based on its adjustments.
4. Appellants did not notify FTB of the federal adjustments.
5. On November 2, 2018, the United States Tax Court entered a stipulated decision finding that appellants’ federal tax liability for 2008 and 2009 was discharged during appellants’ bankruptcy proceedings. On October 7, 2019, the IRS wrote off appellants’ 2008 and 2009 federal tax debts as uncollectible.
6. On January 17, 2020, FTB issued Notices of Proposed Assessment (NPAs) based upon the federal adjustments. For 2008, FTB proposed additional tax of \$8,849, an accuracy-related penalty of \$1,769.80, a late-filing penalty of \$2,212.25, and applicable interest. For 2009, FTB proposed additional tax of \$8,355, an accuracy-related penalty of \$1,671, a late-filing penalty of \$2,088.75, and applicable interest.
7. Appellants did not protest the NPAs. FTB affirmed the NPAs in Notices of Action dated March 18, 2020. This appeal followed.

8. During this appeal, FTB stated that will abate the late-filing and accuracy-related penalties proposed in this matter on the ground that those penalties were discharged by the bankruptcy court.

DISCUSSION

Issue 1: Whether OTA has jurisdiction to consider whether the tax liabilities at issue were discharged in bankruptcy.

Under Chapters 7 and 10 of the Bankruptcy Code (title 11 of the United States Code), the Bankruptcy Court may discharge the debt of certain individuals. (11 U.S.C. §§ 727, 1328.) The Bankruptcy Court has exclusive jurisdiction to determine whether an exception from discharge exists under Bankruptcy Code section 523(a)(2), (4), and (6). (*In re Aldrich* (Bankr. 9th Cir., 1983) 34 B.R. 776, 779.) The Bankruptcy Court and state courts share concurrent jurisdiction for all other discharge exceptions under Bankruptcy Code section 523(a). (*Ibid.*) 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 has been discharged in bankruptcy. (*Appeal of Smith* (81-SBE-145) 1981 WL 11870, citing *Fotochrome, Inc. v. Commissioner (Fotochrome)* (1981) 57 T.C. 842.)¹ 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.²

¹ In *Fotochrome*, the United States Tax Court was asked to determine whether it and the Bankruptcy Court concurrently held jurisdiction to determine a federal income tax liability. In finding that it had concurrent jurisdiction, the court stated, "The jurisdiction of this Court is to redetermine deficiencies in taxes asserted by the Commissioner In exercising this jurisdiction, we do not pretend to allow or disallow a claim against a debtor's estate based on a deficiency in taxes or to discharge taxes as a bankruptcy court might." (*Fotochrome, supra*, 57 T.C. at 847.)

² Citing section 1328 of the Bankruptcy Code, appellant asserts that the amounts at issue in this appeal have been discharged by the Bankruptcy Court. Conversely, FTB argues that OTA does not have jurisdiction to make this determination, and even if it did have jurisdiction, the amounts at issue were not included in the January 11, 2018 Order of Chapter 13 Discharge, which states that "[s]ome debts are not discharged [including] debts for certain taxes specified in 11 U.S.C. §§ 507(a)(8)(C), 523(a)(1)(B), or 523(a)(2)(C) to the extent not paid in full under the plan" Because we lack jurisdiction to decide whether a debt was or was not discharged in a bankruptcy proceeding, we do not decide whether the order of discharge covers the amounts at issue in this appeal.

Issue 2: Whether appellants have shown error in FTB’s proposed assessments of additional tax, which are based on final federal determinations.

A taxpayer shall either concede the accuracy of a federal determination or state wherein it is erroneous. (R&TC, § 18622(a).) A deficiency determination based on a federal audit is presumptively correct, and the taxpayer bears the burden of proving that the determination is erroneous. (*Appeal of Gorin*, 2020-OTA-018P; *Appeal of Brockett* (86-SBE-109) 1986 WL 22731.) Unsupported assertions are not sufficient to satisfy a taxpayer’s burden of proof with respect to a determination based on a federal action. (*Appeal of Gorin, supra*; *Appeal of Magidow* (82-SBE-274) 1982 WL 11930.)

Here, FTB’s proposed assessments were based on federal adjustments pursuant to a federal audit. With respect to the federal assessment, appellants assert that the IRS erroneously disallowed deductions on their federal income tax return Schedule A. Appellants also assert that the IRS erroneously disallowed claimed business expenses on their federal income tax return Schedule C. Appellants argue that they lost some of their tax records due to family issues and that they were forced to reconstruct their books and records. However, appellants have not provided any documentation (reconstructed or otherwise) to show that they are entitled to the disallowed claimed expenses and deductions. Appellants’ unsupported assertions are not sufficient to satisfy their burden of proof. (*Appeal of Gorin, supra*; *Appeal of Magidow, supra*.)

Appellants also contend that because the IRS has “written off” appellants’ federal liabilities for the years at issue, FTB must do so as well. We reject that contention. The evidence indicates that the IRS wrote off the federal tax debts either because they were uncollectible due to appellants’ financial circumstances, or because they were discharged by the bankruptcy court. However, neither of those reasons would require us to overturn the proposed *state* deficiency assessments at issue here. Instead, appellants must show that the basis for the proposed assessments *is incorrect*, which they have not done. Accordingly, FTB’s determination must be upheld.³

³ FTB offers an Offer in Compromise program pursuant to R&TC section 19433, under which FTB may consider a taxpayer’s ability to pay in determining how much to collect on certain liabilities once they have gone final. (<https://www.ftb.ca.gov/pay/if-you-cant-pay/offer-in-compromise.html>.) Taxpayers also may apply to enter into an installment payment agreement with FTB. (<https://www.ftb.ca.gov/pay/payment-plans/index.asp>.) Additionally, FTB offers a settlement program pursuant to R&TC section 19442, under which FTB can evaluate the costs and risks associated with the appeal. (<https://www.ftb.ca.gov/tax-pros/law/ftb-notices/2007-2.pdf>.) Appellants can contact FTB for further information about these programs.

HOLDINGS

1. OTA does not have jurisdiction to consider whether appellants’ tax liabilities were discharged in bankruptcy.
2. Appellants have not demonstrated error in FTB’s proposed assessments for 2008 and 2009, which are based on final federal assessments.

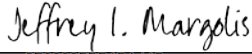
DISPOSITION


In accordance with FTB’s concession on appeal, the late-filing and accuracy-related penalties will be abated. Otherwise, FTB’s action is sustained.

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 Keith T. Long
 Administrative Law Judge

We concur:

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 Jeffrey I. Margolis
 Administrative Law Judge

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 Sheriene Anne Ridenour
 Administrative Law Judge

Date Issued: 10/14/2020