

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 19125591
SAWTANTRA CHOPRA, M.D., INC.)
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OPINION

Representing the Parties:

For Appellant: Aruna Chopra, Representative

For Respondent: Gi Nam, Tax Counsel

D. CHO, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, Sawtantra Chopra, M.D., Inc. (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing \$2,202 of additional tax, a \$440.40 accuracy-related penalty, and applicable interest, for the taxable year ending August 31, 2012 (TYE 2012).¹

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

ISSUE

Whether appellant has demonstrated error in FTB’s proposed assessment of additional tax for the TYE 2012, which is based on a federal determination.

FACTUAL FINDINGS

1. Appellant timely filed its TYE 2012 California Corporation Franchise or Income Tax Return.
2. Subsequently, FTB received information from the Internal Revenue Service (IRS) that appellant’s taxable income was increased by \$48,861, which was comprised of the following adjustments: additional gross receipts or sales of \$26,216; disallowed claimed

¹ FTB conceded that it would abate the \$440.40 accuracy-related penalty. Therefore, this penalty is not at issue in this appeal.

- rent deduction of \$19,493; disallowed claimed taxes and licenses deduction of \$1,149; and disallowed claimed other deductions of \$2,003.
3. Based on the IRS information, FTB revised appellant's California taxable income in accordance with the federal adjustments. In addition, FTB allowed a net operating loss carryover of \$23,950, which appellant did not claim on its original TYE 2012 tax return. This resulted in an additional tax liability of \$2,202, which was reflected in a Notice of Proposed Assessment (NPA) that FTB sent to appellant on August 28, 2018.
 4. Appellant timely protested the NPA but did not provide any reasoning for the dispute other than appellant disagreed with the proposed assessment.
 5. FTB affirmed the NPA by Notice of Action dated November 21, 2019.
 6. This timely appeal followed.

DISCUSSION

R&TC section 18622(a) requires a taxpayer to concede the accuracy of federal changes to a taxpayer's income or to state where the changes are erroneous. It is well settled that a deficiency assessment based on a federal adjustment to income is presumed to be correct and a taxpayer bears the burden of proving that FTB's determination is erroneous. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509, 514; *Appeal of Brockett* (86-SBE-109) 1986 WL 22731.)

Here, FTB received information from the IRS that appellant's TYE 2012 taxable income was increased by \$48,861. Based on this information, FTB made conforming adjustments to appellant's California taxable income. In other words, FTB's proposed assessment is based on the federal adjustments. Therefore, it is appellant's burden to demonstrate that FTB's determination is erroneous.

Appellant contends that its sole shareholder is ill and in a long-term care facility. However, this argument does not establish that the federal determination was reduced or cancelled. Furthermore, this argument does not have any bearing on the unreported income or the sufficiency of the claimed deductions for the TYE 2012. To the extent that appellant is arguing that it does not have the ability to pay the tax, we lack the authority to make discretionary adjustments to a tax assessment based on a taxpayer's ability to pay. (*Appeal of Estate of Luebbert, Deceased, and Luebbert* (71-SBE-028) 1971 WL 2708.) Instead, our function is to determine the correct amount of the taxpayer's California income tax liability. (*Appeals of Dauberger, et al.* (82-SBE-082) 1982 WL 11759.) Therefore, we find that this

argument does not establish error in FTB’s proposed assessment. Appellant also argues that its sole shareholder and that shareholder’s spouse filed for bankruptcy protection in 2011, but the person liable for the proposed additional tax in this appeal is appellant, and not these other individuals. Nonetheless, this argument suffers from the same issue as appellant’s other argument in that it does not explain any error as to FTB’s proposed assessment. Accordingly, we find that appellant has not met its burden of proof.

HOLDING

Appellant has not demonstrated error in FTB’s proposed assessment of additional tax for the TYE 2012, which is based on a federal determination.

DISPOSITION

FTB shall abate the accuracy-related penalty, as conceded on appeal; otherwise, FTB’s action is sustained.

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

We concur:

DocuSigned by:
Nguyen Dang
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Nguyen Dang
Administrative Law Judge

DocuSigned by:
Elliott Scott Ewing
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Elliott Scott Ewing
Administrative Law Judge

Date Issued: 8/10/2020