

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 18083686  
E. CORTEZ AND )  
M. CORTEZ )  
\_\_\_\_\_ )

**OPINION**

Representing the Parties:

For Appellants: E. Cortez and M. Cortez<sup>1</sup>

For Respondent: Eric A. Yadao, Tax Counsel III

For Office of Tax Appeals: William J. Stafford, Tax Counsel III

H. LE, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, E. Cortez and M. Cortez (appellants) appeal actions by Franchise Tax Board (FTB) proposing an assessment of additional tax of \$5,393 and an accuracy-related penalty of \$1,078.60, plus applicable interest, for the 2013 tax year; and an assessment of additional tax of \$4,398 and an accuracy-related penalty of \$879.60, plus applicable interest, for the 2014 tax year.

Appellants waived their right to an oral hearing; therefore, we decide this matter based on the written record.

**ISSUES**

1. Whether appellants have demonstrated error with the proposed assessments of additional taxes.
2. Whether appellants have shown that the accuracy-related penalties should be abated.

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<sup>1</sup> Appellants’ opening brief was submitted by Norman Johnson, EA.

## FACTUAL FINDINGS

### Tax Year 2013

1. Appellants filed a timely joint 2013 California resident income tax return. As relevant to this appeal, appellants' tax return reflected claimed expenses for four rental properties on federal Schedule E, including \$58,988 of mortgage interest, \$14,848 of repairs, and \$17,102 of taxes paid. Appellants also reported \$75,284 of gross sales from appellant-husband's sole proprietor auto service business on federal Schedule C.
2. Subsequently, FTB received information via a FEDSTAR Internal Revenue Service (IRS) Data Sheet, showing that the IRS adjusted appellants' 2013 federal adjusted gross income (AGI) by, among other things, the following amounts: disallowed mortgage interest of \$21,855 (federal Schedule E), increased rents received of \$13,912 (federal Schedule E), and increased gross sales of \$41,872 (federal Schedule C). The IRS's total adjustments increased appellants' income by \$74,822. Also, the IRS imposed an accuracy-related penalty due to negligence.
3. Then, FTB issued a Notice of Proposed Assessment (NPA) that conformed to the federal adjustments above by adding \$74,822 to appellants' 2013 California taxable income. The NPA set forth an additional tax of \$5,393 and an accuracy-related penalty of \$1,078.60, plus applicable interest.

### Tax Year 2014

4. Appellants filed a timely joint 2014 California resident income tax return. As relevant to this appeal, appellants' tax return reflected claimed expenses for four rental properties on federal Schedule E, including \$57,699 of mortgage interest and \$19,232 of taxes paid. Appellants did not claim any repair expenses for the four properties. Appellants also reported \$97,760 of gross sales from appellant-husband's sole proprietor auto service business on federal Schedule C.
5. Subsequently, FTB received information via a FEDSTAR IRS Data Sheet, showing that the IRS adjusted appellants' 2014 federal AGI by, among other things, the following amounts: disallowed mortgage interest of \$18,612 (federal Schedule E), increased rents received of \$16,521 (federal Schedule E), and increased gross sales of \$35,000 (federal

Schedule C). The IRS's total adjustments increased appellants' income by \$68,331.

Also, the IRS imposed an accuracy-related penalty due to negligence.

6. Then, FTB issued an NPA that conformed to the federal adjustments above by adding \$68,331 to appellants' 2014 California taxable income. The NPA set forth an additional tax of \$4,398 and an accuracy-related penalty of \$879.60, plus applicable interest.

#### Protest

7. Appellants timely protested the NPAs, arguing that they disagreed with the proposed adjustments and that the IRS had granted them audit reconsideration.
8. FTB responded by stating that the NPAs were based on final federal examinations and that appellants should provide evidence of any IRS revisions.
9. When appellants did not provide additional evidence, FTB affirmed the NPAs in Notices of Action.
10. Appellants then filed this timely appeal.

### DISCUSSION

#### Issue 1: Whether appellants have demonstrated error with the proposed assessments of additional taxes.

R&TC section 18622(a) provides that a taxpayer shall either concede the accuracy of a federal determination or state wherein it is erroneous. A proposed assessment based on a federal determination is presumptively correct, and the taxpayer bears the burden of proving that the determination is erroneous. (*Appeal of Gorin*, 2020-OTA-018P.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof with respect to an assessment based on a federal determination. (*Ibid.*) It is well established that the failure of a party to introduce evidence that is within his or her control gives rise to the presumption that, if provided, it would be unfavorable. (*Appeal of Cookston* (83-SBE-048) 1983 WL 15434.)

As discussed fully below, appellants have not provided sufficient evidence demonstrating error in the IRS's adjustments for the 2013 and 2014 tax years (or the California proposed assessments based thereon). We also find that appellants are not entitled to offsetting rental property or business expense deductions not originally claimed on their federal and California returns because they have not provided sufficient evidence to support these unclaimed expenses.

### Mortgage Interest

Appellants have provided no mortgage interest statements for the 2013 tax year to substantiate the claimed expense. As for the 2014 tax year, appellants provide two mortgage interest statements (Forms 1098) showing that they paid total mortgage interest of \$58,620.41. However, the 2014 mortgage interest statements do not show which alleged rental properties the mortgage interest payments relate to, that the mortgage interest was deductible, or that the IRS's allowance of a mortgage interest expense deduction failed to account for all allowable mortgage interest amounts.

### Repair Expenses

Appellants provide three documents that appear to be intended to show repair expenses. However, the documents provided do not contain enough information to substantiate the deduction of any additional expenses.<sup>2</sup>

### Vehicle Registration

Appellants provide a California vehicle registration invoice dated "2013" for a 1975 Ford pickup truck, showing a charge of \$106. However, the invoice does not demonstrate that the vehicle was used (in whole or in part) for appellants' rental or business activities. Further, the registration invoice does not demonstrate that the IRS's expense allowances for the 2013 tax year did not already include the \$106 amount.

### Property Tax Bills

Appellants provide seven property tax bills for their alleged rental properties for the property tax fiscal year of July 1, 2014, through June 30, 2015, showing the first installment of various amounts due on November 1, 2014. However, none of the documents show expenses incurred in the 2013 tax year. As for the 2014 tax year, it is not clear that all the tax bills relate to rental properties or otherwise entitle appellants to a deduction. Moreover, the documents do not show the amount of property tax paid in 2014.

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<sup>2</sup> For example, one invoice is undated, and another does not show an amount.

### Business Gross Receipts and Rents Received

The IRS and FTB increased appellants' gross receipts and rents received by over \$100,000 for the two years at issue. Appellants present no evidence to indicate that these adjustments are erroneous.

In summary, appellants have not provided sufficient evidence demonstrating error in the federal adjustments for the 2013 and 2014 tax years (or the California proposed assessments based thereon) and have not provided sufficient evidence to support previously unclaimed expenses.

### Issue 2: Whether appellants have shown that the accuracy-related penalties should be abated.

R&TC section 19164 generally incorporates the provisions of IRC section 6662 and imposes an accuracy-related penalty of 20 percent of the applicable underpayment. As relevant here, the penalty applies to any portion of an underpayment attributable to negligence or disregard of rules and regulations. (IRC, § 6662(b)(1).) When based on a federal action, FTB's assessment of an accuracy-related penalty is presumptively correct. (See *Appeal of Head and Feliciano*, 2020-OTA-127P.) An accuracy-related penalty based upon negligence can be abated upon a showing of reasonable basis or reasonable cause and good faith. (Treas. Reg. §§ 1.6662-3, 1.6664-4.)


The IRS and FTB imposed accuracy-related penalties for the 2013 and 2014 tax years based on appellants' negligence. Appellants have neither disputed the computation of the accuracy-related penalties nor argued (or asserted any facts establishing) any defenses to the applicable accuracy-related penalties—and we find no such evidence in the appeal record. Also, appellants' 2013 and 2014 federal account transcripts show no indication that the federal accuracy-related penalties for those tax years were revised or abated. Accordingly, we find that appellants have not shown that the accuracy-related penalties should be abated.

HOLDINGS

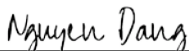
1. Appellants have not demonstrated error in the proposed assessments of additional taxes.
2. Appellants have not shown that the accuracy-related penalties should be abated.


DISPOSITION

We sustain FTB’s actions in full.

DocuSigned by:  
  
 A117831DD49442B  
 Huy "Mike" Le  
 Administrative Law Judge

We concur:

DocuSigned by:  
  
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 Nguyen Dang  
 Administrative Law Judge

DocuSigned by:  
  
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 Kenneth Gast  
 Administrative Law Judge

Date Issued: 12/8/2020