

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 20106805
ESTA NOCHE INCORPORATED)
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OPINION

Representing the Parties:

For Appellant: Anthony Lopez
For Respondent: Christopher Cook, Tax Counsel III

J. MARGOLIS, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, Esta Noche Incorporated (appellant) appeals an action by respondent Franchise Tax Board (FTB), proposing deficiencies in tax and penalties for appellant’s 2014 and 2015 tax years.

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

ISSUE

Whether appellant has sustained its burden of proving that FTB erred in adjusting appellant’s income to take into account federal changes to its 2014 and 2015 tax liabilities.

FACTUAL FINDINGS

1. Appellant, a California corporation, timely filed California tax returns for 2014 and 2015. Appellant’s address, as reflected on its returns, was on Capp Street in San Francisco, California.
2. Appellant filed a Certificate of Dissolution with the California Secretary of State’s Office on April 29, 2019.
3. On April 7, 2017, FTB received information from the IRS indicating that the IRS had increased appellant’s taxable income for 2014 and 2015 by \$16,000 and \$8,574,

respectively. These adjustments generated federal income tax deficiencies of \$6,240 and \$1,287, and accuracy-related penalties of \$1,248 and \$257.40, that were assessed for tax years 2014 and 2015. The IRS information shows that appellant agreed to the federal changes, and they have become final.

4. On March 14, 2019, FTB issued Notices of Proposed Assessment (NPAs) to appellant incorporating the federal adjustments to the extent that they are applicable for California tax purposes. The NPAs proposed tax deficiencies of \$1,414 and \$758, and accuracy-related penalties of \$282.80 and \$151.60, for the years 2014 and 2015, respectively. These notices were issued to the same San Francisco address that was reflected on appellant's tax returns for the years at issue.
5. Appellant filed a protest with FTB from the NPAs. In response to the protest, FTB wrote to appellant (at the same San Francisco address used in appellant's returns and FTB's NPAs) asking whether appellant had any information showing that the IRS had reduced or cancelled its adjustments. Appellant claims that it did not receive this correspondence.
6. On October 7, 2020, FTB issued Notices of Action (NOAs) to appellant affirming the NPAs.
7. Appellant timely filed this appeal from the NOAs.

DISCUSSION

R&TC section 18622(a) requires that a taxpayer shall either concede the accuracy of a federal determination or state wherein it is erroneous. An FTB proposed deficiency assessment that is based on a federal audit adjustment is rebuttably presumed to be correct, and the taxpayer bears the burden of proving otherwise. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509; *Appeal of Gorin*, 2020-OTA-018P.) Taxpayers can satisfy that burden of proof in one of two ways. They can either show that: (i) the IRS changed or eliminated its adjustments; or (ii) the IRS adjustments are incorrect or are not applicable for California tax purposes. (See generally R&TC, § 18622(a).)

In this appeal, FTB has produced evidence showing that the IRS made final federal adjustments to appellant's 2014 and 2015 income, assessing deficiencies in tax and accuracy-related penalties for negligence for each year. Upon receiving notification of the federal changes, FTB issued NPAs to appellant at the San Francisco address shown on its returns for the years at issue. Appellant received those notices and timely filed a timely protest therefrom.

Upon receiving the protest, FTB wrote appellant, asking whether it had evidence showing that the federal adjustments had been reduced or cancelled. After receiving no response, FTB issued NOAs affirming its NPAs in full.

Appellant claims it never received the NPAs nor the subsequently issued FTB letter asking appellant whether it had evidence that the IRS had reduced or cancelled its adjustments. Appellant also claims that “any tax liability was paid,” and that it has been “closed” and has no money.

Appellant’s contention that it did not receive FTB’s NPAs is without merit. The record shows that appellant received the NPAs because appellant timely protested them to FTB.¹ Appellant also contends it did not receive FTB’s letters inquiring as to whether appellant had information showing that the IRS had reduced or cancelled its adjustments. But those letters were sent to the same address that was reflected on appellant’s tax returns, and on FTB’s NPAs and NOAs (which appellant received). Furthermore, even if appellant had not received those letters, appellant could have produced such information in this proceeding, but it has not done so.

Appellant also claims it already paid its tax liabilities, and that nothing more is due. Although appellant may have paid the *federal* tax deficiency amounts for 2014 and 2015, it has not shown that it paid the proposed *California* deficiencies for those years.

Finally, the fact that appellant filed a Certificate of Dissolution with the California Secretary of State’s Office does not prevent us from adjudicating the tax appeal that appellant itself has brought to us for resolution. In this proceeding, our task is to decide whether the liabilities proposed in FTB’s NOAs are correct. We find that they are. Whether and how those liabilities may be collected is not an issue that is before us in this proceeding.

¹ Even if appellant had not received the NPAs, appellant has not alleged, nor has it shown, that it notified FTB that FTB should have used a different mailing address for appellant.

HOLDING

Appellant has not sustained its burden of establishing that FTB erred in determining deficiencies and accuracy-related penalties for the years at issue.

DISPOSITION

FTB’s determination is sustained in full.

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

We concur:

DocuSigned by:
Sara A. Hosey
Sara A. Hosey
Administrative Law Judge

DocuSigned by:
Natasha Ralston
Natasha Ralston
Administrative Law Judge

Date Issued: 4/16/2021