

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18053088
D. NGUYEN AND)
S. ARMSTRONG)
_____)

OPINION

Representing the Parties:

For Appellants: D. Nguyen and S. Armstrong

For Respondent: Mira V. Coutinho, Tax Counsel

For Office of Tax Appeals: Andrew Jacobson, Tax Counsel III

R. TAY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, D. Nguyen and S. Armstrong (appellants) appeal an action by the Franchise Tax Board (respondent) proposing an additional tax of \$5,517.00 and an accuracy-related penalty of \$1,103.40, plus applicable interest, for the 2007 tax year.¹

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

ISSUE²

Whether appellants have demonstrated error in respondent's proposed assessment of additional tax for 2007, which is based on a federal determination.

¹ On appeal, respondent reduced the amount of the proposed additional tax to \$5,385 and the amount of the accuracy-related penalty to \$1,077, plus applicable interest.

² In their opening brief, appellants include the accuracy-related penalty and interest in their amount on appeal. However, appellants provide no arguments for the abatement of the penalty or interest on appeal. Consequently, we sustain respondent's imposition of the accuracy-related penalty and related interest except for revisions resulting from an adjustment to the underlying tax, and will not discuss these issues further.

FACTUAL FINDINGS

1. In 2007, appellants were limited partners, who held a 3.28904 percent interest in a partnership, in Blackbear Drilling Partners (Blackbear), which engaged in oil drilling operations.
2. On October 15, 2008, appellants jointly filed a 2007 California income tax return. Appellants claimed an overpayment, the balance of which was transferred to another tax year account as an estimated tax payment.
3. The IRS audited Blackbear's 2007 federal partnership return. In the course of the audit, Blackbear and the IRS executed multiple waivers that extended the statute of limitations through December 31, 2016.
4. Blackbear, represented by its general partner, Montcalm Co., LLC (Montcalm), and the IRS executed a settlement agreement for the 2007 tax year. Montcalm was also Blackbear's tax matter's partner (TMP).
5. Blackbear subsequently informed respondent of its settlement agreement with the IRS. Upon receiving such information, respondent made corresponding adjustments to appellants' 2007 income tax return with respect to appellants' partnership interest in Blackbear.
6. On March 20, 2015, respondent issued appellants a Notice of Proposed Assessment (NPA), which disallowed intangible drilling costs of \$122,185 and itemized deductions of \$3,474, while allowing depreciation of \$12,105 and other losses of \$52,182.
7. In a letter dated May 5, 2015, appellants protested the NPA. Subsequently, in a letter dated September 25, 2017, appellants informed respondent that they requested a collection due process (CDP) hearing with the IRS, and stated that they would inform respondent of the IRS's decision. Appellants attached to their reply brief a completed copy of an IRS Form 12153, *Request for a Collection Due Process or Equivalent Hearing*, which was dated February 28, 2017.
8. Respondent issued a determination dated October 4, 2017, and a Notice of Action on December 5, 2017, which revised the NPA by reducing the disallowed itemized deductions from \$3,474 to \$1,422. Appellants filed this timely appeal.

9. On appeal, respondent produced a copy of appellants' 2007 Individual Master File (IMF), which shows that the statute of limitations for appellants' 2007 tax year was December 31, 2016, and that the IRS made its assessment on December 13, 2016.
10. Respondent also produced a copy of appellants' 2007 federal account transcript dated January 7, 2021, which shows that the IRS has made no changes to appellants' 2007 federal account, except to assess additional penalties and interest. Appellants confirmed that the IRS has not proceeded with their request for a CDP hearing.

DISCUSSION

R&TC section 18622(a) provides, in pertinent part, that a taxpayer must either concede the accuracy of a federal determination or state wherein it is erroneous. It is well established that a deficiency assessment based on a federal audit report is presumptively correct and that a taxpayer bears the burden of proving that the determination is erroneous. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509, 514; *Appeal of Valenti*, 2021-OTA-093P.) Unsupported assertions are not sufficient to satisfy the taxpayer's burden of proof with respect to an assessment based on a federal action. (*Appeal of Gorin*, 2020-OTA-018P.) A taxpayer's failure to produce evidence that is within his or her control gives rise to a presumption that such evidence is unfavorable to his or her case. (*Appeal of Bindley*, 2019-OTA-179P.)

Here, appellants have provided no evidence showing error in respondent's proposed assessment based on the federal determination. Appellants do not argue and have not provided evidence to show that the IRS erred in disallowing a deduction for Blackbear's intangible drilling expenses of \$122,185. They also do not dispute the adjustment for depreciation and other losses totaling \$64,288.

Rather, appellants' argument is procedural. Appellants argue that the settlement agreement between Blackbear and the IRS should not be binding on them because they did not vote or consent to be bound, and that the IRS's federal assessment was untimely. Furthermore, appellants request that the Office of Tax Appeals delay a decision on this appeal until after the IRS conducts a CDP hearing per their request.

We are not convinced by appellants' arguments. A settlement agreement executed between the IRS and the TMP is generally binding on the other partners of the audited partnership. (IRC, § 6224(c)(3); *Cambridge Partners, L.P. v. Commissioner*, T.C. Memo 2017-194.) Here, it is uncontroverted that Montcalm was the TMP per the Blackbear partnership

agreement, and authorized to enter a settlement agreement on behalf of Blackbear and Blackbear's partners per IRC section 6224(c). Because Blackbear, represented by Montcalm, and the IRS entered into a settlement agreement, the settlement agreement became binding and conclusive on Blackbear's partners, including appellants. Consequently, the IRS was entitled to make computational adjustments to the partners' tax liabilities, even if the TMP of the partnership failed to provide a partner any required notice. (IRC, § 6230(f).) Thus, despite appellants' lack of vote or consent, appellants are bound by the settlement agreement between Blackbear and the IRS.³

Additionally, appellants argue that the federal statute of limitations for the IRS to issue them a deficiency assessment for 2007 expired nine years prior to December 13, 2016, the date when appellants assert the IRS and Blackbear executed the settlement agreement.⁴ The IRS issued its deficiency determination of appellants' 2007 tax year also on December 13, 2016, which is well past the three years that the IRS has generally to make an assessment. However, Blackbear's 2007 Business Master File shows that Blackbear and the IRS executed one or more waivers that extended the statute of limitations through December 31, 2016. These extensions are binding on Blackbear's partners, including appellants. (IRC, § 6229(b).) Thus, the IRS's assessment for appellants' 2007 tax year was not outside the time provided by the statute of limitations. This conclusion is further supported by appellants' 2007 IMF, which shows that the deficiency statute of limitations was December 31, 2016. Consequently, we find appellants' argument concerning the federal statute of limitations is unavailing.

Regarding appellants' CDP hearing request, we are not persuaded to hold this matter in abeyance pending the IRS's proceeding.⁵ Appellants have not shown that a CDP hearing would reduce the final federal assessment. In its CDP hearing request, appellants' sole argument relevant to this appeal was that the IRS's assessment was untimely, which we reject based on the

³ California does not conform to the federal TEFRA provisions. However, we find that a binding settlement agreement executed by a partnership and the IRS is treated as a final federal determination for the partnership *and* the partners bound by the settlement agreement. (See *Appeal of Lewis* (95-SBE-010) 1995 WL 672189.) Thus, the settlement agreement between Blackbear and the IRS constitutes a final federal determination for appellants, which respondent properly used as the basis for its adjustments.

⁴ Appellants do not argue that respondent's proposed assessment was untimely.

⁵ We note that if the IRS decides to make additional changes, appellants will be entitled to file a claim for refund with respondent within two years from the date of any favorable final determination by the IRS or the United States Tax Court. (R&TC, § 19311(a)(1).)

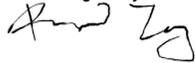
foregoing. Thus, we see no reason to stay a decision in this appeal on the basis of appellants’ pending CDP hearing request with the IRS.

HOLDING

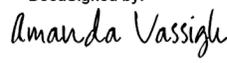
Appellants have not demonstrated error in respondent’s revised proposed assessment of additional tax for 2007, which it is based on a federal determination.

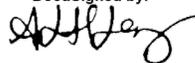
DISPOSITION

Respondent’s action is modified, as conceded by the respondent on appeal, to reduce the additional tax to \$5,385 and the accuracy-related penalty to \$1,077, but is otherwise sustained.

DocuSigned by:

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Richard Tay
Administrative Law Judge

We concur:

DocuSigned by:

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Amanda Vassigh
Administrative Law Judge

DocuSigned by:

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Andrea L.H. Long
Administrative Law Judge

Date Issued: 12/16/2021