

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:

J. PARK AND
E. PARK

) OTA Case No. 21118989
)
)
)
)
)

OPINION

Representing the Parties:

For Appellants: J. Park and E. Park

For Respondent: Alisa L. Pinarbasi, Tax Counsel

J. LAMBERT, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, J. Park and E. Park (appellants) appeal an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$1,068, an accuracy-related penalty of \$213.60, and applicable interest, for the 2017 tax year.¹

Appellants elected to have this appeal determined pursuant to the procedures of the Small Case Program. Those procedures require the assignment of a single administrative law judge. (Cal. Code Regs., tit. 18, § 30209.1.) Appellants waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

ISSUES

1. Whether appellants have shown error in FTB’s proposed assessment of additional tax based on federal adjustments.
2. Whether the accuracy-related penalty should be abated.

¹ On appeal, FTB concedes \$15 of its \$1,068 proposed assessment of additional tax. As a result, FTB states that it will reduce the proposed assessment of additional tax by \$15, from \$1,068 to \$1,053, and will make a corresponding adjustment to the amount of the accuracy-related penalty.

FACTUAL FINDINGS

1. Appellants timely filed their 2017 California Resident Income Tax Return (Form 540).
2. FTB received information from the IRS showing that it made adjustments to amounts reported on appellants' federal tax return, assessed additional federal tax of \$3,404, and imposed an accuracy-related penalty of \$681.
3. Based on the federal adjustments, FTB issued a Notice of Proposed Assessment (NPA) that increased appellants' taxable income by \$13 of interest income, \$20 of dividend income, and \$9,234 of taxable pension/annuities income, and reduced appellants' taxable income by allowing a deduction of \$276 for student loan interest. The NPA proposed additional tax of \$1,068, which included an additional 2.5 percent tax of 231² on the unreported \$9,234 early non-qualified withdrawal from an IRA or pension, and an accuracy-related penalty of \$213.60 plus interest.
4. Appellants protested the NPA. FTB sent appellants a letter requesting information showing that the IRS revised or cancelled the federal assessment or accepted an amended return. After FTB did not receive the requested information, FTB affirmed the NPA in a Notice of Action.
5. This timely appeal followed.

DISCUSSION

Issue 1: Whether appellants have shown error in FTB's proposed assessment of additional tax based on federal adjustments.

A taxpayer shall concede the accuracy of federal changes to the taxpayer's income or state where the determination is erroneous. (R&TC, § 18622(a).) It is well settled 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. (*Appeal of Gorin*, 2020-OTA-018P.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Bracamonte*, 2021-OTA-156P.)

² The NPA reflected "Other Taxes" of \$246. This amount includes \$231 (the 2.5 percent additional tax on the unreported \$9,234 early non-qualified withdrawal from an IRA or pension) plus \$15 (the 2.5 percent additional tax on a separate \$610 early non-qualified withdrawal from an IRA or pension which appellants reported on their return).

Gross income shall mean all income from whatever source derived, including interest, dividends, and annuity and pension income, unless the items of income are specifically excluded by law. (Internal Revenue Code (IRC), § 61(a); R&TC, § 17071; Treas. Reg. § 1.61-1(a).)

Appellants assert that they have not received any explanation of the adjustments and request the calculation and justification for the proposed assessment. Appellants also assert that the information filed with the IRS matches what was filed with FTB. The record includes documentation from the IRS and FTB that explain the adjustments, including federal audit documentation, FTB's notices, and FTB's briefing.

FTB based its adjustments on adjustments made by the IRS. Appellants paid the federal assessment, and there is no indication on federal account transcript that the IRS has made any revisions to the federal assessment. Appellants' federal Wage and Income Transcript shows that they received unreported taxable income, including interest income of \$13, dividend income of \$20, and an early IRA or pension distribution of \$10,363, of which \$9,234 was taxable. While appellants reported a separate early distribution of \$611,³ including the 2.5 percent additional tax of \$15 on this non-qualified early withdrawal, they have not shown that the proposed tax on the unreported early distribution of \$9,234 is incorBurect.⁴

Pursuant to R&TC section 17085(c)(1), which adopts IRC section 72, with modifications, if a taxpayer receives an early distribution from a "qualified retirement plan," the early distribution is subject to an additional 2.5 percent tax. Appellant-husband's Forms 1099-R indicate that the taxable distributions of \$9,845 (\$611 + \$9,234) were early IRA or pension distributions, with no known exceptions. Appellants are therefore liable for an additional 2.5 percent tax of \$246 on the taxable early distributions of \$9,845.

The burden is on appellants to show error in FTB's determination, and they do not provide any arguments or evidence to show the federal adjustments and the proposed assessment are incorrect. Therefore, appellants have not shown error in the proposed assessment of additional tax.

³ The Form 1099-R indicates the taxable amount as \$610, whereas appellants' federal return indicates the taxable amount is \$611. The difference of \$1 is immaterial.

⁴ Appellants do not dispute FTB's allowance of a student loan interest deduction of \$276.

Issue 2: Whether the accuracy-related penalty should be abated.

R&TC section 19164 generally incorporates the provisions of IRC section 6662 and provides that an accuracy-related penalty of 20 percent shall be imposed on an applicable underpayment. As relevant here, the penalty applies to any portion of an underpayment attributable to negligence or disregard of rules and regulations, or any substantial understatement of income tax. (IRC, § 6662(b)(1) & (2).) For purposes of the accuracy-related penalty, the term “negligence” includes any failure to make a reasonable attempt to comply with the provisions of the code, and the term “disregard” includes any careless, reckless, or intentional disregard. (IRC, § 6662(c).) The accuracy-related penalty does not apply to any portion of an underpayment if it is shown that there was reasonable cause for the underpayment and the taxpayer acted in good faith with respect to the underpayment. (IRC, § 6664(c)(1).) As previously discussed, FTB will reduce appellants’ proposed assessment of tax by \$15 and will make a corresponding adjustment to the amount of the accuracy-related penalty.

FTB asserts that appellants’ Individual Master File transcript provides a code indicating that the federal accuracy-related penalty was assessed based on a substantial understatement with negligence as a secondary consideration. FTB asserts that the IRS must have imposed the penalty based on negligence or disregard of rules and regulations because the federal assessment of tax is less than \$5,000. FTB contends that, based on the federal penalty, it may also impose a penalty based on negligence.

Pursuant to R&TC section 18622(a), if any item required to be shown on a federal tax return, including any penalty, is changed or corrected by the IRS, the taxpayer shall concede the accuracy of the determination or state wherein it is erroneous. In this case, the IRS imposed the accuracy-related penalty based on negligence.⁵ Therefore, FTB properly imposed an accuracy-related penalty based on negligence or disregard of rules or regulations. Appellants do not provide any argument or evidence or argument to show reasonable cause and good faith with respect to the underpayment. Accordingly, the accuracy-related penalty is not abated.

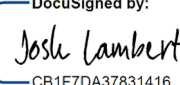
⁵ The IRS imposed the accuracy-related penalty on the basis of negligence or disregard of rules or regulations, as the federal audit assessment did not exceed the threshold for a substantial understatement under IRC section 6662(d)(1). For an individual, there is a substantial understatement of income tax when the amount of the understatement for a taxable year exceeds the greater of 10 percent of the tax required to be shown on the return, or \$5,000. (IRC, § 6662(d)(1).) The federal audit assessment and the FTB proposed assessment of additional tax are both less than \$5,000.

HOLDINGS

1. Appellants have not shown error in FTB’s proposed assessment of additional tax based on federal adjustments.
2. The accuracy-related penalty is not abated.

DISPOSITION

FTB’s action is modified as conceded by FTB on appeal to reduce the tax by \$15 and to correspondingly revise the amount of the accuracy-related penalty. FTB’s action is otherwise sustained.

DocuSigned by:

CB1F7DA37831416...

Josh Lambert
Administrative Law Judge

Date Issued: 5/23/2022