

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

In the Matter of the Appeal of: ) OTA Case No. 220510303  
**O. MOROZOV** )  
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**OPINION**

Representing the Parties:

For Appellant: O. Morozov

For Respondent: Christopher Tuttle, Tax Counsel III

A. KLETTER, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, O. Morozov (appellant) appeals actions by respondent Franchise Tax Board (FTB) proposing to assess additional tax totaling \$11,078.00, accuracy-related penalties (ARPs) totaling \$2,215.60, a late-filing penalty of \$886.00, and applicable interest, for the 2016 and 2017 tax years.<sup>1</sup>

Appellant waived the right to an oral hearing; therefore, Office of Tax Appeals (OTA) decides this matter based on the written record.

**ISSUES**

1. Whether appellant has shown error in FTB’s proposed assessments of additional tax, which are based upon final federal determinations.
2. Whether the ARPs were properly imposed.
3. Whether the late-filing penalty was properly imposed for the 2017 tax year.

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<sup>1</sup> For the 2016 tax year, the additional tax was \$7,294.00 and the ARP was \$1,458.80. For the 2017 tax year, the additional tax was \$3,784.00, and the ARP was \$756.80. The late-filing penalty of \$886.00 was imposed for the 2017 tax year only.

## FACTUAL FINDINGS

### 2016 Tax Year

1. Appellant filed his 2016 California Resident Income Tax Return (Return) by the extended due date and paid the tax due as reported on the return on October 16, 2017.
2. FTB received information from the IRS indicating that it had audited appellant's 2016 federal income tax return, increased appellant's federal taxable income by \$78,800 (mostly due to disallowed deductions), assessed additional federal tax, and imposed a federal ARP. Appellant did not report the federal changes to FTB.
3. Appellant's IRS Account Transcript, dated June 1, 2022, reflects the final federal assessment of the additional federal tax and the federal ARP as of March 23, 2020. There is no indication that the IRS cancelled or reduced this assessment.
4. To the extent allowable by California law, FTB made comparable adjustments to appellant's 2016 Return. FTB issued appellant a Notice of Proposed Assessment (NPA) that increased his taxable income by \$78,800.00, proposed to assess additional tax of \$7,294.00, and imposed the California ARP of \$1,458.80, plus interest.

### 2017 Tax Year

5. Appellant filed his 2017 Return on October 29, 2018, and paid the tax due as reported on the return on the same day, October 29, 2018.
6. FTB received information from the IRS indicating that it had audited appellant's 2017 federal income tax return, increased appellant's federal taxable income by \$57,414 (due to increased gross receipts and disallowed deductions), assessed additional federal tax, and imposed a federal ARP. Appellant did not report the federal changes to FTB.
7. Appellant's IRS Account Transcript, dated June 1, 2022, reflects the final federal assessment of the additional federal tax and the federal ARP as of March 23, 2020. There is no indication that the IRS cancelled or reduced this assessment.
8. To the extent allowable by California law, FTB made comparable adjustments to appellant's 2017 Return. FTB issued appellant an NPA that increased his taxable income by \$57,414.00, proposed to assess additional tax of \$3,784.00, imposed the California ARP of \$756.80, and a late-filing penalty of \$886, plus interest.

Protest of the 2016 and 2017 Tax Years and Appeal

9. In a letter dated November 19, 2021, appellant protested both NPAs, but did not provide a specific argument.
10. FTB affirmed the NPAs in position letters dated February 1, 2022, explaining that it followed the IRS adjustments. FTB enclosed a copy of the FEDSTAR IRS Data Sheet on which FTB relied and provided appellant an opportunity to prove that the federal assessments were cancelled or reduced. Following appellant's failure to respond, FTB issued Notice of Actions affirming the NPAs.
11. This timely appeal followed.<sup>2</sup>

DISCUSSION

Issue 1: Whether appellant has shown error in FTB's proposed assessments of additional tax, which are based upon final federal determinations.

When the IRS makes a final federal determination, a taxpayer must concede the accuracy of the federal changes to a taxpayer's income or state where the changes are erroneous. (R&TC, § 18522(a). 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; *Appeal of Valenti*, 2021-OTA-093P.) In the absence of credible, competent, and relevant evidence showing that FTB's determination is incorrect, it must be upheld. (*Appeal of Valenti, supra*.)

Here, FTB received information from the IRS that appellant's federal taxable income was adjusted and increased for the 2016 and 2017 tax years. FTB's corresponding adjustments are presumptively correct. To meet his burden, appellant must show that FTB's proposed assessments are erroneous.<sup>3</sup>

Appellant provides no specific argument or evidence to contest the final federal determinations, nor does appellant argue or provide evidence that FTB erred in its adjustments

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<sup>2</sup> In his April 18, 2022 appeal, appellant requests an extension of time because the 2016 IRS audit is still in process. However, as indicated above, the IRS adjustments were finalized in March of 2020, and appellant has provided no update nor response to FTB's briefing. There is therefore no need to defer or postpone proceedings.

<sup>3</sup> For personal income tax purposes, California generally conforms to Internal Revenue Code section 63, defining taxable income, except as otherwise provided. (R&TC, § 17073(a).) Subject to California-specific addition and subtraction modifications, a taxpayer must generally report the same federal and California taxable income.

which were based on the federal determinations. Therefore, appellant has not shown that FTB's NPAs were incorrect. Appellant has not even explained the nature of his disagreement with the IRS or why he might be entitled to the disallowed deductions or to a reduction in gross receipts. Appellant had an opportunity to provide information contesting the determination, but has provided no proof of error. The record contains no documentation or evidence concerning the disallowed deductions, and there is no evidentiary basis to overturn FTB's NPA. Accordingly, appellant has not demonstrated error in FTB's adjustments.

Issue 2: Whether the accuracy-related penalties were properly imposed.

R&TC section 19164, which incorporates the provisions of Internal Revenue Code (IRC) section 6662, provides for an ARP of 20 percent of the portion of an underpayment of the tax that was required to be shown on the taxpayer's return. As relevant here, the penalty applies to the portion of the underpayment attributable to: (1) negligence or disregard of rules and regulations; or (2) any substantial understatement of income tax. (IRC, § 6662(b)(1), (2).) For individual taxpayers, 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)(A).)

There are various exceptions to the imposition of the ARP. The ARP shall be reduced by the portion of the understatement attributable to the tax treatment of any item if the relevant facts affecting the item's tax treatment are adequately disclosed and there is a reasonable basis for the tax treatment of such item. (IRC, § 6662(d)(2)(B)(ii).) Additionally, the ARP will not be imposed to the extent that a taxpayer has shown that a portion of the underpayment was due to reasonable cause and the taxpayer acted in good faith with respect to that portion of the underpayment. (IRC, § 6664(c)(1); Treas. Reg. §§ 1.6664-1(b)(2), 1.6664-4.) The taxpayer bears the burden of proving any defenses to the imposition of the accuracy-related penalty. (*Recovery Group, Inc. v. Commissioner*, T.C. Memo. 2010-76.)

In this appeal, appellant has not mentioned the California ARPs and has not argued that the penalties should be waived. The understated tax of \$7,294 for the 2016 tax year exceeds \$5,000, so it is a "substantial understatement of income tax" as that term is used in the law. (IRC, § 6662(b)(2).) The record does not reflect any potential grounds for removing the ARP and it appears that the penalty for the 2016 tax year was correctly calculated (i.e., \$1,458.80 is 20 percent of \$7,294.00 for the 2016 tax year). Therefore, the penalty for the 2016 tax year

cannot be waived. On appeal, FTB concedes that the ARP for the 2017 tax year was not properly imposed and it will be abated.

Issue 3: Whether the late-filing penalty was properly imposed for the 2017 tax year.

R&TC section 19131 imposes a late-filing penalty on a taxpayer who fails to file a return by either the due date or the extended due date unless it is shown that the failure was due to reasonable cause and not willful neglect. The late-filing penalty is calculated at 5 percent of the tax for each month or fraction thereof that the return is late, with a maximum penalty of 25 percent of the tax. (R&TC, § 19131(a).) When FTB imposes this penalty, the law presumes that it is correct. (*Appeal of Xie*, 2018-OTA-076P.)

Appellant filed his 2017 Return on October 29, 2018, which was after the extended due date for filing a return. Therefore, the 2017 Return was several months late, and FTB properly imposed the late-filing penalty. On appeal, appellant provides no evidence, and the record contains no indication, that he had reasonable cause for failure to timely file his Return. Thus, OTA finds no error in FTB's imposition of the late-filing penalty.

HOLDINGS

1. Appellant has not shown error in FTB’s proposed assessments of additional tax, which are based upon final federal determinations.
2. The ARP for the 2016 tax year was properly imposed. In accordance with FTB’s concession, the ARP for the 2017 tax year is abated.
3. The late-filing penalty was properly imposed for the 2017 tax year.

DISPOSITION

FTB’s actions are sustained, as modified to abate the ARP for the 2017 tax year, consistent with FTB’s concession on appeal.

DocuSigned by:  
  
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 Asaf Kletter  
 Administrative Law Judge

We concur:

DocuSigned by:  
  
 25F8FE08FF56478  
 Natasha Ralston  
 Administrative Law Judge

DocuSigned by:  
  
 48745BB806914B4  
 Josh Aldrich  
 Administrative Law Judge

Date Issued: 2/22/2023