

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of:  
**T. USREY**

) OTA Case No. 220710948  
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**OPINION**

Representing the Parties:

For Appellant: T. Usrey

For Respondent: Christopher M. Cook, Tax Counsel

For Office of Tax Appeals: Zack Sabbagh, Graduate Student Assistant

K. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, T. Usrey (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$1,291.00, an accuracy-related penalty of \$258.20, and applicable interest, for the 2015 tax year.

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

**ISSUES**

1. Whether appellant has shown error in FTB’s proposed assessment of additional tax based on federal adjustments for the 2015 tax year.
2. Whether the accuracy-related penalty should be abated.

**FACTUAL FINDINGS**

1. Appellant timely filed his 2015 California income tax return on January 30, 2016.
2. On February 15, 2019, FTB received information from the IRS in the form of a Fedstar IRS Data Sheet, which showed adjustments to appellant’s federal tax return. The IRS

- disallowed appellant's moving expense deductions of \$15,800.00 and imposed an accuracy-related penalty of \$884.80.
3. FTB increased appellant's taxable income by \$15,800.00 based on the federal adjustments. On May 29, 2020, FTB issued a Notice of Proposed Assessment (NPA) proposing an additional tax of \$1,291.00, an accuracy-related penalty of \$258.20, and applicable interest.
  4. On July 21, 2020, appellant protested the NPA.
  5. On May 27, 2022, FTB issued a letter requesting documentation that the federal assessment was either revised or cancelled.
  6. Appellant did not respond and FTB issued a Notice of Action affirming the NPA.
  7. This timely appeal followed.

### DISCUSSION

#### Issue 1: Whether appellant has shown error in FTB's proposed assessment of additional tax based on federal adjustments for the 2015 tax year.

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.)

Income tax deductions are a matter of legislative grace, and a taxpayer who claims a deduction has the burden of proving, by competent evidence, entitlement to that deduction. (*Appeal of Vardell*, 2020-OTA-190P.) To carry that burden, a taxpayer must point to an applicable statute and show by credible evidence that the transactions in question come within its terms. (*Appeal of Jindal*, 2019-OTA-372P.)

Here, FTB received information that the IRS disallowed \$15,800 in claimed moving expense deductions, which increased appellant's federal adjusted gross income. Based on this information, FTB made conforming adjustments to appellant's California taxable income. FTB's proposed assessment is presumed correct. (*Appeal of Gorin, supra.*) Therefore, it is

appellant's burden to demonstrate that FTB's determination is erroneous. (*Appeal of Head and Feliciano*, 2020-OTA-127P.)

Appellant asserts that he paid his 2015 California tax liability in full and that FTB's proposed assessment is incorrect. However, appellant has not presented any argument or evidence to show error in the federal adjustment or in FTB's proposed assessment based upon that adjustment. Additionally, there is no evidence the IRS cancelled or reduced its assessment. Appellant's unsupported assertions are insufficient to meet his burden of proof. (*Appeal of Gorin, supra.*) Therefore, appellant has not shown error in the proposed assessment of additional tax.

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

R&TC section 19164 generally incorporates the provisions of Internal Revenue Code (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 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).) When FTB imposes a penalty, it is presumed to have been imposed correctly. (*Appeal of Xie*, 2018-OTA-076P.)

Here, appellant's understatement of California income tax is \$1,291, which is less than \$5,000.<sup>1</sup> Therefore, appellant's understatement does not constitute a substantial understatement of California income tax. Accordingly, the accuracy-related penalty is only applicable for California purposes if there is another basis for its imposition, such as negligence.

FTB asserts that it imposed the accuracy-related penalty pursuant to R&TC section 19164 based upon the IRS's imposition of the federal accuracy-related penalty. FTB contends that because the federal deficiency is less than \$5,000, it is presumed that the federal accuracy-related penalty was imposed due to negligence. When FTB proposes a penalty based on a federal penalty determination, FTB's determination is presumptively correct. (*Appeal of Abney* (82-

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<sup>1</sup> Appellant's federal understatement of tax was \$4,424, which is less than \$5,000. Ten percent of the reported federal tax, of \$45,813, being \$4,581 would also be less than \$5,000 for there to be a substantial understatement of tax. Therefore, FTB assumed that the IRS imposed the accuracy related penalty due to negligence or disregard of the rules or regulations.

SBE-104) 1982 WL 11781.) IRC section 6662(b) provides, in relevant part, that the penalty applies to the portion of the underpayments attributable to negligence or disregard of rules and regulations. “Negligence” is defined to include “any failure to make a reasonable attempt to comply” with the provisions of the code. (IRC, § 6662(c).) “Negligence” also includes any failure by the taxpayer to keep adequate books and records or to substantiate items properly. (Tres. Reg, § 1.6662-3(b)(1).)

The accuracy-related penalty may be reduced or abated in some circumstances. The penalty also will be reduced by the portion of the understatement attributable to a tax treatment of any item if the relevant facts affecting the item’s tax treatment were adequately disclosed and there was a reasonable basis for the tax treatment of such item. (*Id.*) Also, the penalty will not be imposed to the extent that the taxpayer can show the underpayment was due to reasonable cause and that he or she acted in good faith. (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.) 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.

On appeal, appellant has not raised any arguments with respect to the accuracy related penalty. Instead, appellant continues his assertion that the liability assessed by FTB is incorrect. As discussed above, appellant did not meet his burden of proof with respect to the additional tax. Appellant was negligent as he did not provide any evidence to substantiate the moving expense deduction. (Tres. Reg. § 1.6662-3(b)(1).) Moreover, there is no evidence of reasonable cause and good faith with respect to the underpayment. Therefore, appellant has not established that he is entitled to abatement of the accuracy-related penalty.

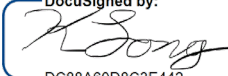
Accordingly, the accuracy-related penalty should not be abated.

HOLDINGS

1. Appellant has not shown error in FTB’s proposed assessment of additional tax based on federal adjustments for the 2015 tax year.
2. The accuracy-related penalty should not be abated.

DISPOSITION

FTB’s proposed assessment and the imposition of the accuracy-related penalty for the 2015 tax year is sustained.

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Keith T. Long  
Administrative Law Judge

Date Issued: 5/25/2023