

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
S. SUZMEYAN

) OTA Case No. 220510331
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OPINION

Representing the Parties:

For Appellant: S. Suzmeyan

For Respondent: Christopher T. Tuttle, Tax Counsel III

R. TAY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, S. Suzmeyan (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$3,808.00 and applicable interest, for the 2015 tax year; and additional tax of \$7,344.00, an accuracy-related penalty of \$1,468.80, and applicable interest, for the 2016 tax year.

Appellant waived the right to an oral hearing; therefore, this panel decides this appeal based on the written record.

ISSUES

1. Whether appellant has shown error in FTB’s proposed assessments based on federal adjustments for tax years 2015 and 2016.
2. Whether appellant has established reasonable cause to abate the accuracy-related penalty for tax year 2016.

FACTUAL FINDINGS

1. Appellant filed timely California income tax returns for the 2015 and 2016 tax years. As a result, FTB issued refunds for both tax years.

2. On May 3, 2019, FTB received information from the IRS showing the IRS adjusted appellant's 2015 and 2016 federal income tax returns. Consequently, FTB made corresponding adjustments to appellant's 2015 and 2016 California income tax returns and issued Notices of Proposed Assessment (NPAs) based on those adjustments.
3. On March 26, 2021, appellant protested the NPAs, explaining that appellant was disputing the federal adjustments with the IRS.
4. During the protest, FTB explained that appellant's federal AGI on the California tax return must be the same as on appellant's federal tax return. Additionally, FTB received information from the IRS showing that the IRS had not cancelled or reduced the federal adjustments. On April 11, 2022, FTB issued Notices of Action for tax years 2015 and 2016 affirming the NPAs.
5. Appellant timely filed this appeal.
6. On appeal, FTB provided copies of appellant's federal Account Transcripts for the 2015 and 2016 tax years dated December 20, 2021. The transcripts do not show appellant was disputing the federal assessments or that the IRS cancelled or reduced its assessments.
7. The Office of Tax Appeals provided opportunities for appellant to provide additional information and documents in response to FTB's submissions; however, appellant did not respond.

DISCUSSION

Issue 1: Whether appellant has shown error in FTB's proposed assessments based on federal adjustments for tax years 2015 and 2016.

A taxpayer shall concede the accuracy of federal determination to a taxpayer's income or state where the determination is erroneous. (R&TC, § 18622(a).) FTB's determination is presumed correct, and the taxpayer bears the burden of proving that FTB's determination is erroneous. (*Appeal of Chen and Chi*, 2020-OTA-021P.) FTB's determination must be upheld in the absence of credible, competent, and relevant evidence showing that its determination is erroneous. (*Ibid.*) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Ibid.*)

Here, FTB received information showing that the IRS made adjustments to appellant's federal tax returns for the 2015 and 2016 tax years that went final. FTB made corresponding

adjustments and issued NPAs for tax years 2015 and 2016 based on the federal adjustments. Accordingly, FTB's proposed assessments are presumed correct and appellant has the burden to establish error in FTB's proposed assessments.

Appellant argues that the IRS did not send the documents explaining the federal adjustments and that appellant is currently disputing the federal adjustments with the IRS. However, appellant has not provided evidence to support these assertions, and appellant's federal Account Transcripts do not show a pending dispute of the IRS's assessments or that the IRS reduced or cancelled its assessments.¹ Moreover, appellant has not provided any other evidence or information showing how FTB's proposed assessments are erroneous.

Therefore, appellant has not met the burden to establish error in FTB's proposed assessments for tax years 2015 and 2016.

Issue 2: Whether appellant has established reasonable cause to abate the accuracy-related penalty for tax year 2016.

An accuracy-related penalty shall be imposed and shall be determined in accordance with Internal Revenue Code (IRC) section 6662, except as otherwise provided. (R&TC, § 19164(a)(1)(A).) An accuracy-related penalty shall be imposed on any "underpayment" of tax required to be shown on a tax return and if the underpayment is attributable to negligence or disregard of the rules or regulations or any "substantial understatement." (IRC, § 6662(a), (b)(1), (b)(2).) An accuracy-related penalty shall not be imposed to the extent the taxpayer establishes that the "understatements" were attributable to reasonable cause and good faith. (IRC, § 6664(c)(1); R&TC, § 194164(d); Cal. Code Regs., tit. 18, § 19164(a).)

"Underpayment" means the amount by which any tax imposed exceeds the sum of the amount shown as the tax by the taxpayer on the return plus the amounts not so shown previously assessed over the amount of rebates made. (IRC, § 6664(a).) There is a "substantial understatement" of income tax for any taxable year if the amount of the "understatement" for the taxable year exceeds the greater of 10 percent of the tax required to be shown on the return for the taxable year or \$5,000. (IRC, § 6662(d)(1)(A).) An "understatement" means the excess of

¹ Rather, the Account Transcripts show appellant entered into installment agreements to pay the 2015 and 2016 federal tax liabilities on October 24, 2019, which is notably two and a half years before appellant filed his request for appeal in this matter. Appellant fully paid the 2015 and 2016 federal tax liabilities on March 16, 2020, and June 1, 2020, respectively.

the amount of tax required to be shown on the return for the taxable year over the amount of tax imposed which is shown on the return reduced by any rebate. (IRC, § 6662(d)(2)(A).)


Here, there was an understatement of \$7,344 (\$13,577 - \$6,233) because appellant was required to report \$13,577 of tax for tax year 2016 but reported only \$6,233 of tax on her 2016 California tax return. The understatement was a “substantial understatement” because the \$7,344 understatement exceeds \$5,000, which is the greater of \$5,000 or 10 percent of the tax required to be shown on appellant’s 2016 tax return. Accordingly, FTB properly imposed the accuracy-related penalty for tax year 2016. Appellant has not shown FTB erred in the imposition of the penalty and has not made any reasonable cause arguments for why the accuracy-related penalty should be abated. This panel also finds no error or other reason in the record to justify abatement of the accuracy-related penalty.

HOLDINGS


1. Appellant has not shown error in FTB’s proposed assessments based on federal adjustments for tax years 2015 and 2016.
2. Appellant has not established reasonable cause to abate the accuracy-related penalty for tax year 2016.

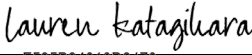
DISPOSITION

FTB’s actions are sustained in full.

DocuSigned by:

 F8E81582726F448...
 Richard Tay
 Administrative Law Judge

We concur:

DocuSigned by:

 6D3FE4ADCA514E7...
 Sara A. Hosey
 Administrative Law Judge

DocuSigned by:

 F595B34010D6470...
 Lauren Katagihara
 Administrative Law Judge

Date Issued: 9/20/2023