

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

In the Matter of the Appeal of:	)	OTA Case No. 22019572
<b>P. THOMPSON AND</b>	)	
<b>K. THOMPSON</b>	)	
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**OPINION**

Representing the Parties:

For Appellants: Betty Williams, Attorney

For Respondent: Joel Smith, Attorney

H. LE, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, P. Thompson and K. Thompson (appellants) appeal an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$106,421, an accuracy-related penalty of \$10,635.10, and applicable interest for the 2003 tax year, and additional tax of \$97,602, an accuracy-related penalty of \$9,224.50, and applicable interest for the 2004 tax year.

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

**ISSUES**

1. Whether FTB's proposed assessments for the 2003 and 2004 tax years are barred by the statute of limitations.
2. Whether appellants have established error in FTB's proposed assessments for the 2003 and 2004 tax years.
3. Whether appellants have established reasonable cause to abate the accuracy-related penalty for the 2003 and 2004 tax years.

### FACTUAL FINDINGS

1. Appellants timely filed their 2003 and 2004 California Resident Income Tax Returns and reported tax of \$49,434 and \$71,084, respectively.
2. The IRS examined appellants' federal tax returns for the 2003 and 2004 tax years and increased their federal adjusted gross income (AGI) for both years.
3. On April 9, 2012, the IRS assessed additional tax and imposed accuracy-related penalties for the 2003 and 2004 tax years, as noted on appellants' IRS account transcripts.
4. Appellants sent a letter dated November 24, 2012, to FTB that included appellants' United States Tax Court (Tax Court) petitions, Tax Court decisions, and closing agreements with the IRS.
5. On December 11, 2013, FTB received information from the IRS (FEDSTAR IRS Data Sheet) for each tax year showing that the IRS increased appellants' federal AGI for the 2003 and 2004 tax years by including additional income, qualified dividends, and reducing itemized deductions.
6. On October 20, 2017, FTB issued Notices of Proposed Assessment (NPAs) for the 2003 and 2004 tax years and proposed to increase appellants' California taxable income based on the federal adjustments. FTB proposed to assess \$106,421 of additional tax and a \$10,635 accuracy-related penalty for tax year 2003 and \$97,602 of additional tax and a \$9,224.50 accuracy-related penalty for tax year 2004.
7. Appellants protested the NPAs for the 2003 and 2004 tax years.
8. FTB issued Notices of Action affirming the NPAs for the 2003 and 2004 tax years.
9. Thereafter, appellants timely filed this appeal.

### DISCUSSION

#### Issue 1: Whether FTB's proposed assessments for the 2003 and 2004 tax years are barred by the statute of limitations.

If any item required to be shown on a federal tax return, including any gross income, deduction, penalty, credit, or tax for any tax year of any taxpayer is changed or corrected by the IRS, then that taxpayer shall report each change or correction within six months after the date of each final federal determination of the change or correction, or as required by FTB, and shall concede the accuracy of the determination or state where it is erroneous. (R&TC, § 18622(a).)

If the taxpayer or the IRS reports that change or correction after the six-month period, FTB may issue an NPA resulting from those adjustments within four years from the date of the notification. (R&TC, § 19060(b).) The specific statute of limitations set forth in R&TC section 19060 overrides the general statute of limitations set forth in R&TC section 19057. (*Appeal of Valenti*, 2021-OTA-093P.)

The date of each final federal determination shall be the date on which each adjustment or resolution resulting from an IRS examination is assessed pursuant to IRC section 6203, which provides that an assessment is made by recording a taxpayer's liability. As relevant here, an IRS account transcript is a valid record of assessment. (Rev. Rul. 2007-21, 2007-14 I.R.B. 865.)

The notification of a change or correction by the IRS must be sufficiently detailed to allow computation of the resulting California tax change and shall be reported in the form and manner as prescribed by FTB. (R&TC, § 18622(c).) FTB requires taxpayers to notify it of the federal adjustments by explaining to FTB that there was a final federal determination or the IRS had made a change, identify the tax year, fully explain all the adjustments, and provide federal documentation showing the adjustments made to taxable income. (*Appeal of Valenti*, *supra*; FTB Publication 1008.)

Here, since appellants' IRS account transcripts for the 2003 and 2004 tax years show the date of the final federal determination was April 9, 2012, appellants were required to report the federal changes to FTB by October 9, 2012. Appellants did not do so within this six-month period.

Appellants argue that they notified FTB of the federal adjustments through the documents attached to their November 24, 2012 letter, and that the statute of limitations expired four years later on November 24, 2016. This letter contained appellants' Tax Court petitions, Tax Court decisions, and closing agreements with the IRS. However, these documents are not sufficient to notify FTB of the federal adjustments under R&TC section 18622. The Tax Court petitions are documents appellants filed with the Tax Court to explain their disagreement with the IRS and are not federal documentation showing the adjustments made to taxable income. The Tax Court decisions merely provided the amounts of the federal deficiency and federal accuracy-related penalty. The closing agreements do not contain any amounts or computations. Accordingly, the letter and documents are not sufficiently detailed to allow FTB to compute the resulting change to appellants' California tax. (R&TC, § 18622(c).)

FTB received sufficient detail as to appellants' federal adjustments from the IRS, via the FEDSTAR IRS Data Sheets, on December 11, 2013, which is more than six months after April 9, 2012. As a result, FTB was required to issue the NPAs for the 2003 and 2004 tax years within four years of December 11, 2013, which is December 11, 2017. FTB timely issued the NPAs on October 20, 2017. Therefore, FTB's proposed assessments for the 2003 and 2004 tax years are not barred by the statute of limitations.<sup>1</sup>

Issue 2: Whether appellants have established error in FTB's proposed assessments for the 2003 and 2004 tax years.

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).) A deficiency assessment based on a federal adjustment is presumed correct and a taxpayer bears the burden of proving that FTB's determination is erroneous. (*Appeal of Gorin*, 2020-OTA-018P.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Ibid.*)

Here, FTB received information from the IRS showing that the IRS increased appellants' federal AGI for the 2003 and 2004 tax years, and FTB proposed to assess additional tax for the 2003 and 2004 tax years based on the federal adjustments. Accordingly, FTB's proposed assessments are presumed correct, and appellants have the burden to establish error in FTB's proposed assessments.

Appellants argue that the federal adjustments are erroneous because the federal adjustments were not properly allocable to appellant-husband. However, appellants have not provided documentation to substantiate their assertions. Therefore, appellants have not established error in FTB's proposed assessments for the 2003 and 2004 tax years.

Issue 3: Whether appellants have established reasonable cause to abate the accuracy-related penalty for the 2003 and 2004 tax years.

An accuracy-related penalty shall be imposed and shall be determined in accordance with IRC section 6662, except as otherwise provided. (R&TC, § 19164(a)(1)(A).) Generally, an

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<sup>1</sup> Appellants also argue that FTB may not assess tax based on an IRS closing agreement and that FTB has not identified a theory under which it may assess tax. However, as previously noted, R&TC section 19060 allows FTB to issue an NPA where the IRS reports a change or correction to FTB. FTB properly issued its NPAs based on the FEDSTAR IRS Data Sheets.

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).)

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 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).)

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, § 19164(d).) The determination of whether a taxpayer acted with reasonable cause and in good faith is made on a case-by-case basis, taking into account all pertinent facts and circumstances, but the most important factor is the extent of the taxpayer’s efforts to assess the taxpayer’s proper tax liability. (Treas. Reg. § 1.6664-4(b)(1).) Reasonable cause may include a taxpayer who reasonably relied in good faith on advice as to the treatment of the taxpayer. (Treas. Reg. § 1.6664-4(c)(1).)

Here, appellants were required to report \$155,855 and \$168,686 of tax for tax years 2003 and 2004, but appellants reported \$49,434 and \$71,084 of tax for tax years 2003 and 2004. As a result, there were understatements of \$106,421 (\$155,855 - \$49,434) and \$97,602 (\$168,686 - \$71,084) for tax years 2003 and 2004. These understatements were “substantial understatements” because the \$106,421 and \$97,602 understatements exceed \$15,585 (\$155,855 x 10%) and \$16,868 (\$168,686 x 10%), which is the greater of \$5,000 or 10 percent of the tax required to be shown on appellants’ tax returns for tax years 2003 and 2004. Accordingly, FTB properly imposed the accuracy-related penalty for tax years 2003 and 2004.

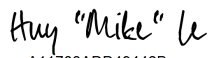
Appellants argue that the understatements were attributable to reasonable cause because they sought legal advice from a consulting company, banks, a surety company, their CPA, and other independent advisors. However, appellants have not provided documentation to substantiate their assertions. Therefore, appellants have not established reasonable cause to abate the accuracy-related penalties.

HOLDINGS


1. FTB proposed assessments for the 2003 and 2004 tax years are not barred by the statute of limitations.
2. Appellants have not established error in FTB’s proposed assessments for the 2003 and 2004 tax years.
3. Appellants have not established reasonable cause to abate the accuracy-related penalty for the 2003 and 2004 tax years.

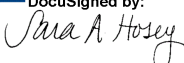
DISPOSITION

OTA sustains FTB’s actions in full.

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 Huy “Mike” Le  
 Administrative Law Judge

We concur:

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 Sheriene Anne Ridenour  
 Administrative Law Judge

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 Sara A. Hosey  
 Administrative Law Judge

Date Issued: 11/15/2023