

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No.: 21098608
C. MARTINES AND)
S. MARTINES)
_____)

OPINION

Representing the Parties:

For Appellants: C. Martines and S. Martines

For Respondent: Eric R. Brown, Attorney

For Office of Tax Appeals: Tom Hudson, Attorney

J. LAMBERT, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, C. Martines and S. Martines (appellants) appeal actions by respondent Franchise Tax Board (FTB) proposing additional tax of \$2,085, and applicable interest for the 2008 tax year; and additional tax of \$1,637, and applicable interest, for the 2009 tax year.¹

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

ISSUE²

Whether appellants have shown error in the proposed assessments, which were based on federal adjustments by the IRS.

¹ In their appeal letter, appellants stated the amount at issue for 2008 as \$1,667. The Notice of Action, which is the subject of this appeal, proposes additional taxes of \$2,085 for 2008. Appellants also stated the amount at issue for 2009 as \$1,249, but the Notice of Action proposes additional taxes of \$1,637 for 2009.

² For both tax years, FTB has agreed to abate the interest for the period running from February 23, 2016, to May 15, 2020. For 2008, the interest abated is \$409.17. For 2009, the amount is \$321.23. Appellants do not raise any arguments with respect to the abatement of interest, and interest will not be discussed further in this Opinion.

FACTUAL FINDINGS

1. On March 9, 2009, appellants filed a timely California Resident Income Tax Return (Form 540) for the 2008 tax year, reporting total tax of \$7,176, total payments of \$5,543, and tax due of \$1,633, which appellants remitted to FTB.
2. On April 11, 2010, appellants timely filed a Form 540 for the 2009 tax year, reporting total tax of \$7,776, total payments of \$6,014, and tax due of \$1,762, which appellants remitted to FTB.
3. FTB subsequently received federal information showing that the IRS audited appellants' 2008 and 2009 federal income tax returns and made numerous adjustments. The IRS Revenue Agent's Report, dated May 20, 2011, itemizes the various adjustments for both tax years.³ For 2008, the IRS adjustments increased appellants' federal taxable income by \$88,370. For 2009, the IRS adjustments increased appellants' federal taxable income by \$70,840.
4. FTB applied the IRS adjustments to appellants' 2008 and 2009 California returns and issued a separate Notice of Proposed Assessment (NPA) for each tax year on October 9, 2012. FTB proposed to assess additional tax of \$2,850 for 2008 and \$2,640 for 2009.
5. Appellants protested each NPA with letters dated November 11, 2012, each explaining that the IRS was reviewing the documentation that they submitted and that they do not anticipate any additional taxes will be assessed by the IRS. Appellants submitted three letters from the IRS, with statements that the IRS has not been able to complete its review of the information that appellants sent.
6. FTB and appellants exchanged correspondence until, by letter dated April 30, 2014, FTB stated that it was deferring further action in anticipation of the final settlement with the IRS. After receiving IRS information indicating that the federal audit review was completed, FTB again contacted appellants on May 15, 2020, stating that it considered the NPAs to be correct as issued.

³ The detailed IRS adjustments are not recited in this Opinion because, as further explained below, no evidence or arguments have been presented concerning any specific expense deduction or any of the specific adjustments made by the IRS.

7. By letter dated September 1, 2020, appellants informed FTB, among other things, that, “[s]ometime in early 2014, a negotiated settlement for some 40 [percent] of the proposed assessment with no penalties or interest was reached between our lawyer [] and the IRS.” The purported IRS settlement was not provided for this appeal.
8. As evidence that a settlement was reached, appellants submitted what appears to be a copy of an e-mail message from an employee at the Office of the Chief Counsel of the Department of the Treasury, dated July 6, 2009, stating, “I have attached in Word Form the decision document reflecting our settlement of 50 [percent] of the deficiency listed on the notice of deficiency and the elimination of the penalty that was asserted.” The attachment referenced in the e-mail was provided as evidence in this appeal.
9. On December 7, 2020, FTB informed appellants that it received information from the IRS indicating that the IRS reduced appellants’ federal tax accounts for the years at issue. By letter dated August 20, 2021, FTB stated that it was also reducing the proposed assessments to conform with the IRS information.
10. On August 24, 2021, FTB issued a separate Notice of Action (NOA) for each year on appeal. The NOAs revised the additional tax proposed in the NPAs. In the NOAs, FTB reduced its proposed assessments of additional tax to \$2,085 for 2008 and \$1,637 for 2009. This timely appeal followed.

DISCUSSION

When the IRS makes changes to a taxpayer’s federal return, the taxpayer must report those changes to FTB and concede the accuracy of the federal changes or state why the changes are erroneous. (R&TC, § 18622(a).) A deficiency assessment based on a federal audit report is presumptively correct and a taxpayer bears the burden of proving that the determination is erroneous. (*Appeal of Gorin*, 2020-OTA-018P.) Unsupported assertions by a taxpayer are insufficient to satisfy their burden of proof with respect to a proposed assessment based on a federal action. (*Ibid.*) In the absence of credible, competent, and relevant evidence showing that FTB’s determination is incorrect, that determination must be upheld. (*Appeal of Bindley*, 2019-OTA-179P.)

In general, FTB must issue a proposed assessment within four years of the date the taxpayer files his or her California return. (R&TC, § 19057.) If there are adjustments to a taxpayer’s federal account and the taxpayer or the IRS notifies FTB within six months of the date

that the federal changes become final, then FTB may issue a proposed assessment within two years of the date of notification, or within the general four-year statute of limitations period, whichever expires later. (R&TC, § 19059.)

On appeal, appellants assert that, “[t]he facts show that a settlement was reached between the [IRS] and us on June 12, 2012 . . . It is our position that the FTB should have ordered an audit at that time since they are under an obligation under the Statute of Limitations to conduct an audit within four years of an assessment.”

Appellants have not provided any evidence showing an error in the proposed assessments. They have not discussed any specific audit adjustments or explained the nature of any disagreement with the IRS audit. Appellants assert that they reached a settlement agreement with the IRS, but no such agreement has been provided. Appellants did provide an e-mail message dated July 6, 2009, from the Office of the Chief Counsel of the Department of the Treasury, which vaguely refers to a settlement of some sort, but that settlement was never provided to the Office of Tax Appeals (OTA). The date of the e-mail is approximately two years before the IRS Revenue Agent’s Report concerning the IRS audit for the 2008 and 2009 tax years, which was issued on May 20, 2011, so the e-mail does not have any obvious relevance to the federal audit of the 2008 and 2009 tax years that are the subject of this appeal. In addition, the July 2009 e-mail is dated before the completion of the 2009 tax year, and only three months after appellants filed their 2008 federal return in March 2009. And according to appellant’s federal account transcript for 2008, the audit of appellants’ 2008 tax year was not opened until November 12, 2009. Therefore, it does not appear that the e-mail is related to the 2008 or 2009 tax years. Without a copy of the purported settlement agreement with the IRS, OTA cannot determine whether it might impact or show an error in FTB’s proposed assessments. OTA notes that, in the NOAs, FTB reduced the amount of the proposed assessment of tax in the NPAs based on revised information FTB received from the IRS. Accordingly, appellants have failed to show error in FTB’s proposed assessments.

As for appellants’ contention that FTB’s proposed assessments are untimely, appellants do not cite any legal authority for their assertion that FTB is under an obligation under the statute of limitations to conduct an audit “within four years of an assessment.” California law does not contain any such audit obligation. However, this appeal provided appellants with the opportunity to provide the records necessary to substantiate their entitlement to any of the

deductions or transactions which were disallowed by the IRS, but appellants have failed to provide any such records or evidence.

With regard to the applicable statute of limitations, FTB issued its NPA for each tax year on October 9, 2012, less than two years after FTB received the IRS Revenue Agent's Report, dated May 20, 2011. In addition, the NPAs were timely issued under the four-year statute of limitations. (See R&TC, § 19057.) The 2008 return was filed on March 9, 2009, and the four-year statute of limitations for issuing an NPA expired on March 9, 2013. The 2009 return was filed on April 11, 2010, and the four-year statute of limitations for issuing an NPA expired on April 11, 2014. Therefore, there is no merit to the argument that the proposed assessments are barred by the statute of limitations.

HOLDING

Appellants have not shown error in the proposed assessments, which are based on federal adjustments by the IRS.

DISPOSITION

FTB's action is modified as conceded on appeal to abate the interest for both 2008 and 2009 for the period running from February 23, 2016, to May 15, 2020, which results in the abatement of interest of \$409.17 for 2008, and \$321.23 for 2009. FTB's actions are otherwise sustained.

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Josh Lambert
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Josh Lambert
Administrative Law Judge

We concur:

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Eddy Y.H. Lam
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Eddy Y.H. Lam
Administrative Law Judge

DocuSigned by:
Sheriene Anne Ridenour
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Sheriene Anne Ridenour
Administrative Law Judge

Date Issued: 12/12/2023