

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of:  
**G. DILLAHUNTY**

) OTA Case No. 221212114  
)  
)  
)  
)  
)

**OPINION**

Representing the Parties:

For Appellant: G. Dillahunty

For Respondent: Christopher T. Tuttle, Attorney

H. LE, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, G. Dillahunty (appellant) appeals an action by the Franchise Tax Board (respondent) proposing additional tax of \$969.00, an accuracy-related penalty of \$193.80, and applicable interest for the 2018 tax year.

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

**ISSUES**

1. Whether appellant has demonstrated error in respondent’s proposed assessment, which is based on a federal determination.
2. Whether appellant has demonstrated that the accuracy-related penalty should be abated.

**FACTUAL FINDINGS**

1. Appellant filed his 2018 California income tax return.
2. Subsequently, respondent received information that the IRS audited appellant’s 2018 federal income tax return and disallowed \$18,426.00 in expenses and deductions. The federal adjustments resulted in the IRS assessing additional tax and imposing a 20 percent accuracy-related penalty.

3. Based on the information provided by the IRS, respondent made corresponding adjustments to appellant's 2018 California income tax return. Respondent issued appellant a Notice of Proposed Assessment (NPA) that disallowed \$18,426.00 in expenses and deductions, proposed additional tax of \$969.00, and a 20 percent accuracy-related penalty of \$193.80, plus interest.
4. Appellant protested the NPA.
5. Respondent issued a position letter and then a Notice of Action, affirming the NPA.
6. Appellant timely filed this appeal.
7. During this appeal, respondent submitted appellant's 2018 IRS Account Transcript, dated January 4, 2023, which shows a tax per return of \$6,032.00, a miscellaneous penalty under transaction code 240 (accuracy-related penalty) of \$811.80, and additional tax assessed by examination of \$4,059.00. The IRS did not reduce or cancel the federal assessment.

#### DISCUSSION

Issue 1: Whether appellant has demonstrated error in respondent's proposed assessment, which is based on a federal determination.

A taxpayer shall either concede the accuracy of a federal determination or state how it is erroneous. (R&TC, § 18622(a).) If the IRS makes a change or correction to “any item required to be shown on a federal tax return, including any gross income, deduction, penalty, credit, or tax for any year,” the taxpayer must report the federal change to respondent within six months after the date it becomes final. (*Ibid.*) A deficiency assessment based on a federal audit report is presumptively correct, and the taxpayer bears the burden of proving that the determination is erroneous. (*Appeal of Gorin*, 2020-OTA-018P.) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof with respect to an assessment based on a federal action. (*Ibid.*)

Income tax deductions are a matter of legislative grace, and the taxpayer bears the burden of establishing entitlement to the deductions claimed. (*Appeal of Vardell*, 2020-OTA-190P.) To meet this burden, a taxpayer must point to an applicable statute authorizing the deduction and show by credible evidence that the deduction claimed falls within the scope of the statute. (*Appeal of Jindal*, 2019-OTA-372P; *Appeal of Dandridge*, 2019-OTA-458P.)

Here, the IRS disallowed in total \$18,426 in expenses and deductions. Subsequently, based on the IRS's disallowance, respondent also disallowed \$18,426 in expenses and deductions in its NPA. To prevail in this appeal, appellant must show that either the IRS reduced or cancelled appellant's disallowed expenses and deductions, or, regardless of the federal action, appellant is entitled to the disallowed amounts.

Appellant contends that the IRS lowered its assessment. However, appellant's 2018 IRS Account Transcript shows that the IRS did not reduce or cancel the federal assessment. In addition, appellant has proffered no evidence or argument that he is otherwise entitled to the disallowed expenses and deductions. Thus, appellant has not met his burden of proving error in respondent's proposed assessment, or in the federal determination upon which respondent based its proposed assessment.

Issue 2: Whether appellant has demonstrated that the accuracy-related penalty should be abated.

Internal Revenue Code (IRC) section 6662, incorporated by R&TC section 19164, provides for an accuracy-related penalty of 20 percent of the applicable underpayment. As relevant here, the accuracy-related penalty applies to the portion of the underpayment attributable to: (1) negligence or disregard of rules and regulations (negligence), or (2) any substantial understatement of income tax (substantial understatement).<sup>1</sup> (IRC, § 6662(b)(1) & (2).)

Appellant's 2018 IRS Account Transcript has an entry for transaction code 240, which indicates that the IRS imposed the accuracy-related penalty.<sup>2</sup> According to the available evidence, the IRS imposed the accuracy-related penalty based on negligence because the amount of the federal understatement does not exceed the substantial understatement of tax thresholds. Specifically, appellant's federal understatement of \$4,059 does not exceed \$5,000, which is greater than 10 percent of the tax required to be shown on the return of \$1,009.10 (10 percent x [\$4,059 + \$6,032] = \$1,009.10).

---

<sup>1</sup> "Negligence" is defined to include "any failure to make a reasonable attempt to comply" with the provisions of the code. (IRC, § 6662(c).) "Disregard" is defined to include "careless, reckless, or intentional disregard." (*Ibid.*) "Substantial understatement of income tax" exists when the understatement for a taxable year exceeds the greater of either 10 percent of the tax required to be shown on the return or \$5,000. (IRC, § 6662(d)(1)(A).)

<sup>2</sup> See [https://www.irs.gov/irm/part20/irm\\_20-001-005#idm1401692946735520](https://www.irs.gov/irm/part20/irm_20-001-005#idm1401692946735520).

When respondent’s proposed assessment is based on a federal determination that imposed the accuracy-related penalty based on negligence, respondent’s imposition of the penalty based on negligence is presumed correct. (See *Appeal of Abney* (82-SBE-104) 1982 WL 11781 [Where respondent imposes a negligence penalty based on a federal determination, “[t]he presumption of correctness which attaches to respondent’s determinations under these circumstances also applies . . .”].)<sup>3</sup> Accordingly, OTA finds that respondent properly imposed the accuracy-related penalty.

The accuracy-related penalty may be reduced or abated to the extent a taxpayer shows that: (1) there is substantial authority for the taxpayer’s reporting position, (2) the position was adequately disclosed in the tax return (or a statement attached to the return) and there is a reasonable basis for treatment of the item, or (3) the taxpayer acted in good faith and had reasonable cause for the understatement. (*Appeals of Lovinck Investments N.V., et al.*, 2021-OTA-294P.) Appellant has not asserted any facts or legal authority to establish any of the potentially applicable defenses, nor has he otherwise satisfied his burden of proving error in respondent’s imposition of the accuracy-related penalty. Accordingly, appellant has failed to establish that the penalty should be abated.

---


<sup>3</sup> *Appeal of Abney* dealt with former R&TC section 18684, which provided for a five percent negligence penalty. However, the five percent negligence penalty is similar to the accuracy-related penalty based on negligence under IRC section 6662, as incorporated by R&TC section 19164. In addition, R&TC section 19164 later replaced former R&TC section 18684. In particular, former R&TC section 18684 was repealed and replaced by R&TC section 18685, and then later renumbered to R&TC section 19164, operative January 1, 1994. (Assem. Bill No. 274 (1989-1990 Reg. Sess.); Sen. Bill No. 3 (1993-1994 Reg. Sess.)) Thus, OTA finds *Appeal of Abney* is applicable to the accuracy-related penalty based on negligence.

HOLDINGS


1. Appellant has not demonstrated error in respondent’s proposed assessment, which is based on a federal determination.
2. Appellant has not demonstrated that the accuracy-related penalty should be abated.

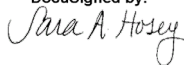
DISPOSITION

OTA sustains respondent’s action.

DocuSigned by:  
  
AT1783ADD49442B...  
 Huy “Mike” Le  
 Administrative Law Judge

We concur:

DocuSigned by:  
  
7A8C8E38740B4D5...  
 Cheryl L. Akin  
 Administrative Law Judge

DocuSigned by:  
  
6D3FE4A0CA514E7...  
 Sara A. Hosey  
 Administrative Law Judge

Date Issued: 11/1/2023