

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: )  
N. BRAMBILA ) OTA Case No. 221011595  
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**OPINION**

Representing the Parties:

For Appellant: N. Brambila  
For Respondent: Noel Garcia-Rosenblum, Attorney

V. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, N. Brambila (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$4,780, an accuracy-related penalty of \$953.20, and applicable interest for the 2016 tax year.

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

**ISSUES**

1. Whether appellant has established error in FTB’s assessment for the 2016 tax year which is based on a federal adjustment.
2. Whether appellant has established a basis to abate the accuracy-related penalty.

**FACTUAL FINDINGS**

1. On April 15, 2017, appellant filed a joint California Resident Income Tax Return, Form 540, for the 2016 tax year together with J. Brambila, who is not a party to this appeal. The return reported federal adjusted gross income (AGI) of \$90,447, California adjustments of \$1,455, and California AGI of \$88,992. The return reported tax of \$424 and exemption credits of \$566, resulting in no tax due. The return reported income tax withholdings of \$1,428 which were claimed as an overpayment.

2. FTB accepted the 2016 return as filed and refunded the claimed overpayment of \$1,428.
3. The IRS audited and adjusted appellant and J. Brambila's joint 2016 Form 1040, increasing their federal AGI to \$166,904. After adjustments,<sup>1</sup> the IRS exam increased appellants federal taxable income by \$81,986. The IRS assessed additional tax of \$5,714 and imposed an accuracy-related penalty of \$1,142.80 plus interest.<sup>2</sup>
4. The IRS assessment and accuracy-related penalty were paid by appellant and/or J. Brambila on September 24, 2019.
5. On February 7, 2020, FTB received a copy of federal adjustment from the IRS. To the extent applicable under California law, FTB made corresponding adjustments to appellant and J. Brambila's 2016 return.
6. FTB issued appellant and J. Brambila a Notice of Proposed Assessment (NPA) increasing their reported 2016 taxable income by \$83,720 after miscellaneous adjustments.<sup>3</sup> FTB proposed additional tax of \$4,780 and imposed an accuracy-related penalty of \$953.20, plus interest.<sup>4</sup>
7. Appellant protested the NPA. In response, FTB issued a letter to appellant stating that the NPA is based on the federal adjustment. FTB requested that, within 30 days, appellant produce a revised federal report indicating that the IRS revised or cancelled the 2016 federal determination.
8. After appellant failed to respond to its letter, FTB issued a Notice of Action affirming the NPA.
9. Appellant filed this appeal.

### DISCUSSION

Issue 1: Whether appellant has established error in FTB's assessment for the 2016 tax year which is based on a federal adjustment.

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<sup>1</sup> The IRS reduced the amount of allowed medical and dental expenses by \$4,001 and the amount of excess miscellaneous deductions by \$1,529.

<sup>2</sup> The federal accuracy-related penalty is 20 percent of the federal assessed additional tax.

<sup>3</sup> FTB reduced the amount of allowed medical expense deductions by \$5,734, the amount of allowed miscellaneous deductions by \$1,529, and disallowed the claimed \$600 deduction for student loan interest.

<sup>4</sup> The California accuracy-related penalty is 20 percent of the proposed additional tax.

R&TC section 18622(a) provides that the taxpayer shall either concede the accuracy of a federal determination or state where it is erroneous. It is well settled that FTB's proposed assessment based on a federal determination is presumptively correct and the taxpayer bears the burden of proving that the determination is erroneous. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509, 514; *Appeal of Valenti*, 2021-OTA-093P.) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof. (*Appeal of Mazer*, 2020-OTA-263P.) In the absence of credible, competent, and relevant evidence showing that FTB's proposed assessment is incorrect, it must be sustained. (*Appeal of Valenti*, 2021-OTA-093P.)

Income tax deductions are a matter of legislative grace, and a taxpayer who claims a deduction has the burden of proving by competent evidence that he or she is entitled to that deduction or credit. (*New Colonial Ice Co., Inc. v. Helvering* (1934) 292 U.S. 435, 440; *Appeal of Vardell*, 2020-OTA-190P.) To meet 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.) FTB's denial of a claimed deduction is presumed correct until the taxpayer has proven his or her entitlement. (*Appeal of Janke* (80-SBE-059) 1980 WL 4988.)

Appellant contends that she was not employed in 2016 and that she should not be responsible for the additional tax due. Appellant states that she is undergoing a divorce with J. Brambila.

Spouses that file a joint return are jointly and severally liable for the tax on the total income on the return. (R&TC, § 19006.) The tax can be collected from either or both spouses unless modified by court order or by FTB through an innocent spouse claim. (*Ibid.*) FTB has provided appellant with directions to its website with information on innocent spouse relief. However, appellant has not argued or provided evidence to support that she qualifies for innocent spouse relief, there is no evidence of either spouse filing an innocent spouse claim with FTB, and no evidence of a court order regarding an innocent spouse claim.

FTB proposed an assessment of additional tax based on adjustments made to appellant's federal income as a result of an IRS exam and which is reflected in appellant's federal transcript. The record does not show that the federal adjustments have been modified, altered, withdrawn, cancelled, or rescinded, nor has appellant proven that she is entitled to the deductions claimed in her original return. Accordingly, appellant has not established error in FTB's determination.

Issue 2: Whether appellant has established a basis to abate the accuracy-related penalty.

R&TC section 19164 generally incorporates the provisions of Internal Revenue Code (IRC) sections 6662 and 6664 and imposes an accuracy-related penalty of 20 percent on any portion of the underpayment attributable to a substantial understatement of income tax. (IRC, § 6662(b)(2).) An understatement of tax is defined as the excess of the amount of tax required to be shown on the return for the tax year, over the amount of tax imposed that is shown on the return, reduced by any rebate. (IRC, § 6662(d)(2)(A).) For individual taxpayers, the understatement of income tax is substantial if it exceeds the greater of 10 percent of the tax required to be shown on the return, or \$5,000. (IRC, § 6662(d)(1)(A).)

In determining whether there is a substantial understatement, the amount of the understatement shall be reduced by any portion of the understatement that is attributable to: (1) the tax treatment of any item by the taxpayer if there is or was substantial authority for such treatment; or (2) any item if the relevant facts affecting the item's tax treatment were adequately disclosed in the return (or in a statement attached to the return) and there is a reasonable basis for the tax treatment of the item by the taxpayer. (IRC, § 6662(d)(2)(B); see also Treas. Reg. § 1.6662-4(d)-(f).)

IRC section 6664(c)(1) provides that the accuracy-related penalty shall not be imposed under IRC section 6662 “with respect to any portion of an underpayment if it is shown that there was a reasonable cause for such portion and that the taxpayer acted in good faith with respect to such portion.”

Here, FTB imposed an accuracy-related penalty of \$953.20 which is approximately 20 percent of the underpaid tax of \$4,780. FTB states that it imposed the penalty based upon the IRS penalty, and that FTB presumes the penalty was imposed by the IRS based on a substantial underpayment of tax. For individual taxpayers, the understatement of income tax is substantial if it exceeds the greater of 10 percent of the tax required to be shown on the return, or \$5,000. (IRC, § 6662(d)(1)(A).) To be a substantial understatement of tax in this case, the understatement of \$4,780 must exceed the greater of: (1) 10 percent of the amount of tax required to be shown on the return, which is equal to \$478; (2) or \$5,000. Because \$5,000 is the greater of the two amounts, and \$4,780 does not exceed this amount, appellants' understatement of tax is not substantial. Accordingly, the accuracy-related penalty cannot be imposed on this basis.

HOLDINGS

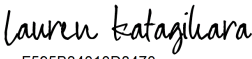
1. Appellant has not established error in FTB’s assessment for the 2016 tax year which is based on a federal adjustment.
2. Appellant has established a basis to abate the accuracy-related penalty.

DISPOSITION

FTB’s assessment of tax is sustained and the accuracy-related penalty is abated.

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 Veronica I. Long  
 Administrative Law Judge

We concur:

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 Lauren Katagihara  
 Administrative Law Judge

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 Administrative Law Judge

Date Issued: 2/9/2024