

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
J. PIGNATARO) OTA Case No. 230413006
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OPINION

Representing the Parties:

For Appellant: J. Pignataro

For Respondent: Camille Dixon, Attorney

E. LAM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, J. Pignataro (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$11,750, an accuracy-related penalty of \$2,350, and applicable interest for the 2015 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 demonstrated error in FTB’s proposed assessment for the 2015 tax year, which is based on a federal determination.
2. Whether appellant has demonstrated that the accuracy-related penalty should be abated.
3. Whether interest should be abated.

FACTUAL FINDINGS

1. Appellant timely filed his 2015 California tax return, reporting no tax due.
2. FTB received information in the form of a FEDSTAR IRS Data Sheet (Fedstar Sheet) indicating that the IRS audited appellant’s 2015 federal tax return. The IRS made various adjustments and imposed a 20 percent accuracy-related penalty. Appellant did not notify FTB of the federal adjustments. Based on the federal adjustments, FTB made

- corresponding adjustments to appellant's 2015 California tax return and issued appellant a Notice of Proposed Assessment (NPA).
3. According to the NPA, FTB increased appellant's reported taxable income by \$160,374, which consisted of allowing an additional \$8,212 one-half self-employment tax deduction; disallowing \$35,518 in claimed Schedule C Other expenses; disallowing \$55,068 in claimed Schedule C Rent or lease expenses; and disallowing \$78,000 in claimed Schedule C Commission and fees expenses.¹ The NPA proposed additional tax of \$11,750 and imposed a 20 percent accuracy-related penalty of \$2,350, plus applicable interest.
 4. By letter dated September 8, 2020, appellant protested the NPA, contending that he was disputing the IRS findings.
 5. On July 9, 2021, FTB issued appellant a letter stating that information it received from the IRS did not indicate that the IRS had reduced or canceled its adjustments to appellant's 2015 federal tax return.
 6. In response, appellant sent FTB a letter stating that he received the decision from the IRS's audit reconsideration for the 2015 tax year. Appellant indicated, however, that he was in the process of appealing it for a court hearing and requested FTB to designate his account as pending until his case was settled with the IRS.
 7. On February 10, 2023, FTB sent appellant a letter indicating that the IRS had not reduced or canceled its adjustment to appellant's 2015 federal tax return, nor did the IRS indicate that it was in the process of reconsidering its adjustments. Therefore, FTB requested appellant to provide documentation from the IRS indicating either a reduction or cancellation of its adjustment to appellant's 2015 federal tax return or that the matter is still being reviewed. FTB also stated that if it did not receive a response from appellant by March 10, 2023, FTB would affirm the NPA.
 8. FTB did not receive a response from appellant. Therefore, FTB issued appellant a Notice of Action, affirming the NPA.
 9. This timely appeal followed.

¹ The Fedstar Sheet indicated a federal adjustment of \$164,374, but the NPA adjusted appellant's California taxable income by \$160,374, resulting in a \$4,000 difference. This difference stems from the disallowed federal deduction of \$4,000 in tuition and fees, which appellant deducted on his federal tax return, but not on his original California tax return. Therefore, FTB did not need to adjust for the \$4,000 deduction in tuition and fees from the California tax return since it was never deducted.

10. On appeal, FTB submits appellant's 2015 IRS Account Transcript, dated April 18, 2023, which does not show that the 2015 tax year's federal determination was subsequently reduced or canceled.
11. FTB also submits appellant's 2015 federal Individual Master File (IMF), indicating that the IRS imposed an accuracy-related penalty. Specifically, the accuracy-related penalty was identified by deficiency penalty code 786, which denotes that the penalty was imposed based on negligence or disregard of rules or regulations. The IMF also does not show that the federal determination was subsequently reduced or canceled.

DISCUSSION

Issue 1: Whether appellant has demonstrated error in FTB's proposed assessment for the 2015 tax year, 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 FTB within six months after the date it becomes final. (R&TC, § 18622(a).) 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.*) In the absence of credible, competent, and relevant evidence showing that FTB's determination is incorrect, such determination must be upheld. (*Appeal of Bindley*, 2019-OTA-179P.)

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, citing *New Colonial Ice Co. v. Helvering* (1934) 292 U.S. 435, 440.) 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, appellant provides no substantive arguments contending that FTB's proposed assessment is in error. Rather, appellant contends that he filed an appeal with the IRS and has

not received any response from the IRS on his dispute. However, the latest IRS Account Transcript, Fedstar Sheet, and IMF in the record do not show that the federal determination was canceled or revised. Appellant also has not provided any evidence to show that the IRS is further examining his 2015 tax return. Furthermore, appellant has proffered no evidence or argument in response to the adjustment establishing that he is entitled to any of the disallowed amount. Therefore, appellant has not met his burden of proving error in FTB's proposed assessment for 2015, or in the federal determination upon which FTB based its proposed assessment.

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

R&TC section 19164, which conforms to the provisions of Internal Revenue Code (IRC) section 6662, 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).² (IRC, § 6662(b).) When the proposed assessment is based on a federal determination that imposed the penalty based on negligence, FTB's imposition of the penalty based on negligence is presumed correct. (See *Appeal of Abney* (82-SBE-104) 1982 WL 11781.) Here, the proposed assessment is based on a federal determination that imposed the accuracy-related penalty based on negligence. Accordingly, FTB's imposition of the penalty based on negligence is presumed correct, and the Office of Tax Appeals (OTA) finds that FTB 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

² "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).)

FTB's imposition of the accuracy-related penalty. Accordingly, appellant has failed to establish that the penalty should be abated.

Issue 3: Whether interest should be abated.

Imposing interest on a tax deficiency is mandatory. (R&TC, § 19101(a).) Interest is not a penalty imposed on the taxpayer; it is compensation for the taxpayer's use of money after it should have been paid to the state. (*Appeal of Moy*, 2019-OTA-057P.) There is no reasonable cause exception to the imposition of interest, and it can only be abated or waived in certain limited situations when authorized by law. (*Ibid.*)


In order to qualify for interest abatement, a taxpayer must qualify under the waiver provisions of R&TC sections 19104, 19112, or 21012. (*Appeal of Balch*, 2018-OTA-159P.) The relief of interest under R&TC section 21012 is not relevant here because FTB did not provide appellant with any written advice. Under R&TC section 19104, FTB is authorized to abate or refund interest if there has been an unreasonable error or delay in the performance of a ministerial or managerial act by an employee of FTB. Here, appellant has not alleged, and the record does not reflect, any such errors or delays. Appellant also does not allege a financial hardship pursuant to R&TC section 19112. Even if such a claim were made, OTA does not have jurisdiction to overturn FTB's decision with respect to whether appellant qualify for relief under R&TC section 19112. (*Appeal of Moy, supra.*) Based on the foregoing, appellant has failed to establish a basis to abate or waive interest.

HOLDINGS

1. Appellant has not demonstrated error in FTB’s proposed assessment for the 2015 tax year, which is based on a federal determination.
2. Appellant has not demonstrated that the accuracy-related penalty should be abated.
3. Interest should not be abated.

DISPOSITION

FTB’s action is sustained.

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 Eddy Y.H. Lam
 Administrative Law Judge

We concur:

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 Administrative Law Judge

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 Andrew Wong
 Administrative Law Judge

Date Issued: 3/1/2024