

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 230413133
J. WEBER)
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OPINION

Representing the Parties:

For Appellant: J. Weber

For Respondent: Christopher T. Tuttle, Attorney

For Office of Tax Appeals: Sean Erdman, Graduate Student Assistant

R. TAY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, J. Weber (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$5,586, an accuracy-related penalty of \$1,117.20, and applicable interest for the 2018 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 met his burden of proof to establish error in FTB’s proposed assessment of additional tax for the 2018 tax year.
2. Whether appellant has established a basis for abatement of the accuracy-related penalty for the 2018 tax year.

FACTUAL FINDINGS

1. Appellant filed a timely 2018 California Resident Income Tax Return on April 14, 2019.¹

¹ Appellant filed a joint return with his spouse; however, appellant’s spouse is not a party in this appeal.

2. FTB subsequently received information that the IRS audited appellant's 2018 federal income tax return. The IRS audit resulted in adjustments to appellant's Schedule C and Schedule A deductions, an additional tax assessment of \$14,134, and an accuracy-related penalty of \$2,826.80, plus interest. Appellant did not report these changes to FTB.
3. On August 30, 2022, FTB proposed adjustments to appellant's tax account for the 2018 tax year that corresponded with the federal adjustments. FTB issued a Notice of Proposed Assessment (NPA) showing these proposed adjustments, which included additional tax of \$5,586, and an accuracy-related penalty of \$1,117.20, plus interest.
4. On October 25, 2022, appellant protested the NPA.
5. On January 24, 2023, FTB issued a position letter denying appellant's protest, and subsequently, issued a Notice of Action dated March 16, 2023, affirming the NPA.

DISCUSSION

Issue 1: Whether appellant has met his burden of proof to establish error in FTB's proposed assessment of additional tax for the 2018 tax year.

R&TC section 18622(a) requires a taxpayer to concede the accuracy of federal changes to a taxpayer's income or state where the changes are erroneous. It is well settled that a deficiency assessment based on a federal adjustment to income is presumed to be correct and a taxpayer bears the burden of proving with credible, competent, and relevant evidence that FTB's determination is incorrect. (*Appeal of Valenti*, 2021-OTA-093P; *Appeal of Gorin*, 2020-OTA-018P.)

R&TC section 17041(a)(1) provides, in pertinent part, that tax shall be imposed upon the entire taxable income of every resident of California. Gross income is includable in taxable income unless it is otherwise deductible. (R&TC, § 17073.) Internal Revenue Code (IRC) section 162, which is incorporated into California law by R&TC section 17201, allows taxpayers to deduct ordinary and necessary business expenses paid or incurred during the tax year in carrying on any trade or business. 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 it. (*Appeal of Vardell*, 2020-OTA-190P.) To support a deduction, the taxpayer must establish by credible evidence, other than mere assertions, that the deduction claimed falls

within the scope of a statute authorizing the deduction. (*Appeal of Dandridge*, 2019-OTA-458P.)

FTB received information from the IRS that appellant's federal taxable income was adjusted for the 2018 tax year and made corresponding adjustments to appellant's California taxable income for that year. Appellant claims that the business expenses were from his own start-up, and not from an old company like the IRS determined. However, appellant does not provide any evidence to show that the adjustments are erroneous. Also, the record does not show that the IRS cancelled or revised its assessment. Consequently, appellant has not met his burden of proof to establish error in FTB's proposed assessment.

Issue 2: Whether appellant has established a basis for abatement of the accuracy-related penalty for the 2018 tax year.

California conforms to IRC section 6662, which imposes an accuracy-related penalty of 20 percent of the applicable underpayment. (R&TC, § 19164(a)(1)(A)-(B).) As relevant here, the penalty applies to the portion of the underpayment attributable to any "substantial understatement of income tax." (IRC, § 6662(b)(2).) For individuals, a substantial understatement of income tax is defined as an understatement that 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)(i)-(ii).) An "understatement" 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 the tax imposed which is shown on the return, reduced by any rebate. (IRC, § 6662(d)(2)(A)(i)-(ii).) Here, appellant reported a total tax of \$9,290, but should have reported a total tax liability of \$14,876, which results in an understatement of \$5,586. This understatement exceeds both \$5,000 and 10 percent of the tax required to be shown on the return (i.e., \$1,488). Accordingly, the accuracy-related penalty is properly imposed.

The accuracy-related penalty does not apply to any portion of an underpayment if it is shown that there was reasonable cause for the underpayment and the taxpayer acted in good faith with respect to the underpayment. (IRC, § 6664(c)(1).) Such a determination is made on a case-by-case basis, considering all the pertinent facts and circumstances. (Treas. Reg. § 1.6664-4(b).) The relevant factors include the taxpayer's efforts to assess the proper tax liability. (*Ibid.*)

Appellant provides no argument or evidence to show reasonable cause for the substantial underpayment. Additionally, while there are additional exceptions that allow for the accuracy-related penalty to be reduced or eliminated,² appellant does not provide any argument or evidence establishing that any of the exceptions apply. Accordingly, appellant has not shown that the accuracy-related penalty should be abated.

HOLDINGS

1. Appellant has not met his burden of proof to establish error in FTB’s proposed assessment of additional tax for the 2018 tax year.
2. Appellant has not established a basis for abatement of the accuracy-related penalty for the 2018 tax year.

DISPOSITION

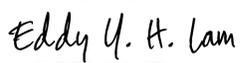
FTB’s action is sustained in full.

DocuSigned by:

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 Richard Tay
 Administrative Law Judge

We concur:

DocuSigned by:

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 Eddy Y.H. Lam
 Administrative Law Judge

DocuSigned by:

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 Huy “Mike” Le
 Administrative Law Judge

Date Issued: 5/28/2024

² Taxpayers may reduce or eliminate the understatement if they successfully demonstrate the following exceptions: (1) the taxpayers had substantial authority for their treatment of any item giving rise to the understatement; or (2) the relevant facts affecting the item’s tax treatment were adequately disclosed and there is a reasonable basis for the tax treatment of such item. (IRC, § 6662(d)(2)(B).)