

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 230513428
S. PISANIS AND)
B. PISANIS)
_____)

OPINION

Representing the Parties:

For Appellants: S. Pisanis and B. Pisanis

For Respondent: Marguerite Mosnier, Attorney

J. LAMBERT, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, S. Pisanis and B. Pisanis (appellants) appeal an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$816, a late filing penalty of \$135, an accuracy-related penalty of \$163.20, and applicable interest for the 2012 tax year.¹

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

ISSUES

1. Whether FTB’s proposed assessment is barred by the statute of limitations.
2. Whether appellants have established error in FTB’s proposed assessment based on a final federal determination.

FACTUAL FINDINGS

1. Appellants untimely filed a joint California tax return for the 2012 tax year.
2. Subsequently, as relevant here, the IRS adjusted appellants’ federal tax return for the 2012 tax year to disallow \$43,363 of Schedule C expenses, \$3,135 of medical and dental

¹ The Office of Tax Appeals will not discuss the late filing penalty or the accuracy-related penalty because appellants do not dispute these penalties. On appeal, FTB agrees to abate interest from May 31, 2022, through March 8, 2023.

- expenses, and \$1,000 of capital losses. The IRS also adjusted appellants' federal tax return for the 2012 tax year to include a \$1,448 self-employment tax deduction.
3. On April 24, 2017, the IRS assessed tax based on these adjustments for the 2012 tax year and assessed late filing and accuracy-related penalties.
 4. On October 25, 2018, FTB received information from the IRS showing that the IRS assessed tax based on its adjustments for the 2012 tax year.
 5. On April 1, 2022, FTB issued a Notice of Proposed Assessment (NPA) to appellants proposing to assess \$816 of additional tax, a \$135 late filing penalty, and a \$163.20 accuracy-related penalty based on the federal adjustments.
 6. Appellants protested the NPA and argued that FTB issued the NPA after the expiration of the statute of limitations. Appellants also explained that they were not able to pay the proposed assessment because of financial difficulties.
 7. FTB explained to appellants that it timely issued the NPA within the statute of limitations and FTB was not able to determine whether appellants suffer from extreme financial hardship until after the proposed assessment becomes due and payable.
 8. FTB issued a Notice of Action affirming the NPA.
 9. Thereafter, appellants timely filed this appeal.

DISCUSSION

Issue 1: Whether FTB's proposed assessment is barred by the statute of limitations.

If any item required to be shown on a federal tax return for any year of any taxpayer is changed or corrected by the IRS, then the taxpayer shall report each change or correction within six months after the date of each final federal determination of the change or correction, or as required by FTB. (R&TC, § 18622(a).) If a taxpayer or the IRS reports a change or correction made by the IRS to FTB more than six months after the date of the final federal determination, then a notice of proposed deficiency assessment resulting from the adjustment may be mailed to the taxpayer within four years from the date the taxpayer or the IRS notifies FTB of that change or correction. (R&TC, § 19060(b).)

Here, the final federal determination date was April 24, 2017, because the IRS assessed tax based on its adjustments on this day. The IRS notified FTB of the federal adjustments on October 25, 2018, which was more than six months after the final federal determination date. As

a result, the statute of limitations for FTB to issue a proposed assessment expired on October 25, 2022, four years later, and FTB timely issued its proposed assessment on April 1, 2022.

Therefore, FTB's proposed assessment is not barred by the statute of limitations.

Issue 2: Whether appellants have established error in FTB's proposed assessment based on a final federal determination.

A taxpayer shall concede the accuracy of federal determination or state where the determination is erroneous. (R&TC, § 18622(a).) A deficiency assessment based on a federal adjustment is presumed correct and a taxpayer bears the burden of proving that FTB's determination is erroneous. (*Appeal of Gorin*, 2020-OTA-018P.) FTB's determination must be upheld in the absence of credible, competent, and relevant evidence showing that its determination is incorrect. (*Appeal of Chen and Chi*, 2020-OTA-021P.)

Here, appellants do not dispute the accuracy of the federal determination. Instead, appellants argue that they cannot pay the proposed assessment. While the Office of Tax Appeals (OTA) is sympathetic to appellants' situation, OTA lacks the authority to make discretionary adjustments to a proposed assessment of tax based on a taxpayer's ability to pay. (*Appeal of Robinson*, 2018-OTA-059P.)²

Therefore, appellants have not established error in FTB's proposed assessment based on a final federal determination.


² After this Opinion becomes final, appellants may contact FTB to determine whether they qualify for FTB's offer in compromise program or a payment plan. (See <https://www.ftb.ca.gov/pay/if-you-cant-pay/> [for more information about FTB's payment options].)

HOLDINGS

1. FTB’s proposed assessment is not barred by the statute of limitations.
2. Appellants have not established error in FTB’s proposed assessment based on a final federal determination.


DISPOSITION

Pursuant to FTB’s concession on appeal, interest is abated from May 31, 2022, through March 8, 2023. Otherwise, FTB’s action is sustained in full.


Signed by:


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 Josh Lambert
 Administrative Law Judge

We concur:

Signed by:


 32D46B0C49C949F...
 Veronica I. Long
 Administrative Law Judge

DocuSigned by:


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 Asaf Kletter
 Administrative Law Judge

Date Issued: 8/15/2024