

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
E. GOZLAN) OTA Case No. 230914320
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OPINION

Representing the Parties:

For Appellant: E. Gozlan
For Respondent: Vivian Ho, Attorney
Maria E. Brosterhous, Attorney Supervisor

S. HOSEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, E. Gozlan (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$26,808.42 for the 2012 tax year.

Office of Tax Appeals (OTA) Panel Members Sara A. Hosey, Teresa A. Stanley, and Eddy Y.H. Lam held a Virtual oral hearing for this matter on September 18, 2024. At the conclusion of the hearing, the record was closed, and this matter was submitted for an opinion pursuant to California Code of Regulations, title 18, section 30209(b).

ISSUES

1. Whether FTB’s proposed assessment for the 2012 tax year is barred by the statute of limitations.
2. Whether appellant has shown reasonable cause to abate the accuracy-related penalty (ARP).

FACTUAL FINDINGS

1. Appellant filed his 2012 California tax return on December 15, 2013. The IRS audited appellant’s 2012 federal tax return, adjusting appellant’s federal tax return to include additional partnership income, wage income, rental income and other income. The IRS made its determination final on July 11, 2016.

2. Appellant did not notify FTB of the IRS adjustments. The IRS notified FTB of the federal adjustments on June 8, 2018.
3. FTB issued a Notice of Proposed Assessment (NPA) on May 23, 2022, adjusting appellant's California tax return to conform with the changes the IRS made to appellant's federal tax return and applying an ARP and interest.
4. FTB issued a Notice of Action affirming the NPA on August 10, 2023.
5. Appellant filed this timely appeal.

DISCUSSION

Issue 1: Whether FTB's proposed assessment for the 2012 tax year is barred by the statute of limitations.

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 shall report the federal change to FTB within six months after the date of each final federal determination. (R&TC, § 18622(a).) If the taxpayer or the IRS reports the change or correction within six months after the final federal determination, FTB may issue an NPA resulting from those adjustments within two years from the date of the notice. (R&TC, § 19059(a).) If the taxpayer or the IRS reports that change or correction after the six-month period, FTB may issue an NPA resulting from those adjustments within four years from the date of the notification. (R&TC, § 19060(b).) R&TC section 19060(a) provides that if the taxpayer fails to notify FTB of the federal changes, then FTB may issue a proposed assessment at any time. The specific statute of limitations set forth in R&TC section 19060 overrides the general statute of limitations in R&TC section 19057.¹ (*Appeal of Valenti*, 2021-OTA-093P.)

In this appeal, the IRS reported the federal adjustments to FTB on June 8, 2018, which is more than six months from the date of its final determination on July 11, 2016. Therefore, FTB had until June 8, 2022, four years from the date of the IRS notification, to assess tax pursuant to R&TC section 19060(b). FTB issued its NPA on May 23, 2022, which is within the four-year statute of limitations set forth in R&TC section 19060(b).

Appellant argues that he did not timely receive the NPA. Appellant claims that he received the NPA by regular mail on June 13, 2022, with no postmark or date stamp on the envelope provided. Appellant argues that there is no proof that the NPA was timely mailed as there was no postmark or receipt for certified or registered mail. Appellant cites to several FTB

¹ The general statute of limitations pursuant to R&TC section 19057(a) would have required FTB to mail its NPA to appellant within four years after the return was filed.

webpages about certified mailing requirements for taxpayers sending in various time-sensitive documents to FTB. Appellant asks OTA to apply the same legal standards to FTB as those provided to taxpayers and to apply the law fairly to both sides.

However, the law is well settled that FTB may send notices to a taxpayer's last known address by first class mail postage prepaid. (R&TC, § 18416.) FTB satisfies the notice requirements under the law when it sends a notice to a taxpayer's last known address, even if not received by the taxpayer. (R&TC, § 18416; *U.S. v. Zolla* (9th Cir. 1984) 724 F.2d 808, 810; see also *Appeal of Goodwin* (97-SBE-003) 1997 WL 258474 ["a notice is valid when mailed to the taxpayer's last-known address"].) R&TC section 18416 provides as follows: (a) unless expressly otherwise provided in this part, any notice may be given by first-class mail postage prepaid; (b) for purposes of this part, any notice mailed to a taxpayer shall be sufficient if mailed to the taxpayer's last-known address; and (c) the last-known address shall be the address that appears on the taxpayer's last return filed with FTB, unless the taxpayer has provided to FTB clear and concise written or electronic notification of a different address, or FTB has an address it has reason to believe is the most current address for the taxpayer. When FTB provides evidence that it mailed the notice to the taxpayer's last-known address and the notice was not returned to FTB as undeliverable, such notice is sufficient. (See *Appeal of Bryant* (83-SBE-180) 1983 WL 961596 ["the record indicates that [FTB] mailed the notice and demand"]; *Appeal of Halaburka* (85-SBE-025) 1985 WL 15809 ["[FTB's] computer has verified that the notice was sent"]; *Appeal of Findley* (86-SBE-091) 1986 WL 22761 ["[FTB's] records indicate that the notice was sent"].)

R&TC section 19050 provides that a "certificate by the Franchise Tax Board . . . of the mailing of the notices specified in this article is prima facie evidence of the assessment of the deficiency and of the giving of the notices." FTB argues that although providing a certificate would provide prima facie evidence of the mailing of the NPA, it may also rely on its records showing a notice was sent by first-class mail to appellant's last known address rule. FTB is not required to obtain a certificate of mailing when it mails its notices. (See R&TC, §§ 19033, 19045 and 19133.) The statutory requirement is that FTB's deficiency assessments "shall be mailed in a manner that includes a postmark . . . [which] means a postal marking made on a letter, package, or postcard indicating the date on which the item is delivered to the United States Postal Service." (R&TC, § 19033.)

In this case, the NPA provided on appeal is dated May 23, 2022. Appellant has conceded that the NPA was mailed to the proper address. Additionally, FTB's Taxpayer Information Folder system records indicate that the NPA was sent out on May 23, 2022, to

appellant's last known address. Therefore, FTB has met its legal requirement to timely mail the NPA. Appellant has not provided sufficient evidence to rebut this proof. The applicable burden of proof is by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(b).) To meet this evidentiary standard, a taxpayer must establish by documentation or other evidence that the circumstances he or she asserts are more likely than not to be correct. (*Appeal of Estate of Gillespie*, 2018-OTA-052P.) Appellant simply provides testimony to the fact that he received the NPA on June 13, 2022, and that FTB should be required to have certified mailing receipts. There is no corroborating evidence to support appellant's statements, and appellant does not provide other arguments or evidence to show FTB's mailing was improper, such as a defect in the mailing process, FTB not following its normal mailing procedures, or that the NPA was not mailed to the last-known address. Therefore, the NPA was properly mailed under the last-known address rule, pursuant to R&TC section 18416, within the statute of limitations.

Issue 2: Whether appellant has shown reasonable cause to abate the ARP.

R&TC section 19164 generally incorporates the provisions of Internal Revenue Code (IRC) section 6662, which provides for an ARP of 20 percent of the applicable underpayment of tax. As relevant here, the ARP applies to the portion of the underpayment attributable to any substantial understatement of income tax. (IRC, § 6662(b)(2).) For an individual, there is a "substantial understatement of income tax" when the amount of the understatement for a taxable year exceeds the greater of 10 percent of the tax required to be shown on the return or \$5,000. (R&TC, § 19164; IRC, § 6662(d)(1)(A).)

Here, appellant does not dispute that there was a substantial understatement on the return, that the understatement was correctly calculated, or that FTB properly assessed the penalty based upon the information then available to it. Therefore, OTA finds that FTB properly imposed the ARP based on substantial understatement of income tax.

The ARP may be reduced or abated to the extent a taxpayer shows that: (1) there is substantial authority for appellants' 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) that they acted in good faith and had reasonable cause for the understatement. (IRC, §§ 6662(d)(2)(B), 6664(c)(1); R&TC, § 19164(d); Cal. Code Regs., tit. 18, § 19164(a); see *Appeals of Lovinck Investments N.V., et al.*, 2021-OTA-294P.) As relevant to this appeal, a determination of whether a taxpayer acted with reasonable cause and in good faith is made on a case-by-case basis and depends on the pertinent facts and circumstances, including the taxpayer's efforts to assess the proper tax liability, the taxpayer's

knowledge and experience, and the extent to which the taxpayer relied on the advice of a tax professional. (Treas. Reg. § 1.6664-4(b)(1); *Appeal of Steffier*, 2024-OTA-017P.) However, unconditional reliance on a preparer or adviser, by itself, does not always constitute reasonable reliance. (*Appeal of Steffier, supra.*) The taxpayer must also exercise “diligence and prudence” and the reliance must be reasonable. (*Ibid.*)

At the hearing, appellant argued that the IRS audit disallowed forgiveness of debt income from a short sale of his primary residence in 2012, for which he was required to pay back federal taxes with penalties and interest. Appellant testified that he was advised by his CPA that excluding the income from the short sale was proper. Appellant also stated at the hearing that he hired an attorney with over 40 years of tax experience for this tax matter. Appellant provided correspondence with his attorney regarding the completion of his IRS audit, in which the attorney stated California authorities would be notified of the federal audit changes by the IRS. He then had a falling out with the attorney and made an offer-in-compromise himself with the IRS. Appellant says he was never told or understood that he was required to contact FTB with the federal audit changes.


While OTA finds appellant’s testimony credible, reliance on a preparer or adviser, does not always constitute reasonable cause. Appellant has not provided corroborating evidence outlining his reliance on his CPA or attorney, what matters they provided advice on (federal or state), or what actions were taken to ensure California state law compliance. Furthermore, the most important factor in determining whether a taxpayer acted with reasonable cause and in good faith is the extent of the taxpayer’s efforts to ascertain his or her proper tax liability. (*Appeal of Steffier, supra.*) Appellant has not shown what actions he took in exercising diligence and prudence to determine his California tax liability. Appellant testified that he was never told to contact FTB with his federal audit changes, but he also testified that he was told by his attorney that FTB would contact appellant. A reasonable taxpayer would have reached out to determine his California tax liability, assuming increasing one’s income (from the disallowed forgiveness of debt income) would also increase one’s state income tax (as was done on the federal level). Thus, despite appellant’s credible testimony that he was misled by his advisors, appellant must still establish that his reliance was objectively reasonable based on all of the facts and circumstances. (*Ibid.*) Appellant has not done so and has not presented any additional facts or legal authority to establish other potentially applicable defenses. Accordingly, OTA concludes that appellant has failed to establish that the ARP should be abated.

HOLDINGS

1. FTB’s proposed assessment for the 2012 tax year is not barred by the statute of limitations.
2. Appellant has not shown reasonable cause to abate the ARP.


DISPOSITION

FTB’s action is sustained.


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 Sara A. Hosey
 Administrative Law Judge

We concur:

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 Teresa A. Stanley
 Administrative Law Judge

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 Eddy Y.H. Lam
 Administrative Law Judge

Date Issued: 11/22/2024