2025-OTA-164
Nonprecedential

OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **D. LEE**	OTA Case No. 230914282

OPINION

Representing the Parties:

For Appellant: D. Lee

For Respondent: Alisa L. Pinarbasi, Attorney

S. ELSOM, Hearing Officer: Pursuant to Revenue and Taxation Code (R&TC) section 19045, D. Lee (appellant) appeals actions by the Franchise Tax Board (respondent) proposing additional tax of $1,180 and applicable interest for the 2011 tax year, and additional tax of $5,203, an accuracy-related penalty of $1,040.60 and applicable interest for the 2012 tax year.

Appellant waived the right to an oral hearing; therefore, the matter was submitted to the Office of Tax Appeals (OTA) on the written record pursuant to California Code of Regulations, title 18, section 30209(a).

ISSUES

1. Whether appellant has demonstrated error in respondent's proposed assessments for the 2011 and 2012 tax years.
2. Whether appellant has demonstrated that the accuracy-related penalty (ARP) should be abated for the 2012 tax year.
3. Whether appellant is entitled to interest abatement for the 2011 and 2012 tax years.

FACTUAL FINDINGS

1. Appellant timely filed a 2011 California income tax return reporting total tax and tax due of $1,642, which appellant paid.
2. Appellant timely filed a 2012 California income tax return reporting total tax of $1,615, California tax withheld of $468, and tax due of $1,147, which appellant paid.

3. The IRS opened an examination of appellant's 2011 and 2012 federal income tax returns on July 26, 2013, and February 2, 2014, respectively.
4. Appellant filed for bankruptcy on or around September 16, 2014.[1] The IRS's examination of appellant's 2011 and 2012 federal income tax returns remained open during appellant's bankruptcy.
5. Appellant's bankruptcy proceedings concluded on or around November 13, 2019.[2]
6. On March 8, 2021, the IRS closed its examinations of appellant's returns for the 2011 and 2012 tax years, which resulted in the assessment of additional tax and applicable interest for both tax years, and the assessment of the ARP for 2012 only. The IRS provided its federal audit determinations to respondent on March 2, 2021.[3]

2011 Tax Year Adjustments

7. On September 6, 2022, respondent issued a Notice of Proposed Assessment (NPA) to appellant to adjust the following Schedule C items in accordance with the IRS determination for the 2011 tax year: a decrease to other expenses of $10,564, and a decrease to car and truck expenses of $3,586. These adjustments resulted in a net increase to appellant's California Adjusted Gross Income (CA AGI) of $13,281,[4] additional tax of $1,180, and applicable interest.
8. Appellant filed this timely appeal of respondent's adjustments to appellant's 2011 California income tax liability and accrued interest.

2012 Tax Year Adjustments

9. On September 6, 2022, respondent issued an NPA to appellant to adjust the following Schedule C items in accordance with the IRS determination for the 2012 tax year: a decrease to other expenses of $47,741, a decrease to travel expenses of $10,856, and a decrease to car and truck expenses of $1,827. These adjustments resulted in a net

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[1] The date of the IRS examination and appellant's bankruptcy filing are reported on appellant's 2011 and 2012 IRS account transcripts dated January 10, 2024.

[2] The date of appellant's bankruptcy discharge is reported on appellant's 2011 and 2012 IRS account transcripts dated January 10, 2024.

[3] March 2, 2021, is the date listed as "Received Date" on respondent's FedStar reports, which include a list of all adjustments made by the IRS to appellant's 2011 and 2012 federal tax returns.

[4] Respondent also reduced appellant's CA AGI for the 2011 tax year by a "self-employed AGI adjustment" of $869, which resulted from the adjustments to appellant's Schedule C net income. Neither party contests this adjustment, which is to the benefit of appellant. As a result, OTA does not further address it in this Opinion.

increase to appellant's CA AGI of $56,713,[5] additional tax of $5,203, and applicable interest. In accordance with the IRS determination, respondent also assessed an ARP of $1,040.60.

10. Appellant filed this timely appeal of respondent's adjustments to appellant's 2012 California income tax liability, the ARP, and accrued interest.

DISCUSSION

Issue 1: Whether appellant has demonstrated error in respondent's proposed assessments for the 2011 and 2012 tax years.

R&TC section 18622(a) provides that a taxpayer shall either concede the accuracy of a final federal determination or state wherein it is erroneous. Although respondent may base its proposed assessment on a final federal determination to the extent applicable under California law, it is not bound to do so and can conduct an independent investigation. (*Appeal of Black*, 2023-OTA-023P.) Likewise, appellant can establish respondent's proposed assessment based on a final federal determination is incorrect. (*Ibid.*) However, in the absence of credible, competent, and relevant evidence showing respondent's determination is incorrect, it must be upheld. (*Ibid.*) A deficiency assessment based on a federal audit report is presumptively correct and a taxpayer bears the burden of proving that the determination is erroneous. (*Appeal of Gorin*, 2020-OTA-018P.) The applicable burden of proof is by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(b)).) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof. (*Appeal of Gorin*, supra.)

Here, the IRS provided respondent with the federal determinations on March 2, 2021, and respondent issued NPAs to appellant on September 6, 2022, to make adjustments to appellant's 2011 and 2012 California income tax liabilities in accordance with the IRS determinations. Appellant did not report the IRS income adjustments to respondent, and generally asserts that she was unaware of the federal adjustments. Appellant specifically states, "[t]he tax years in question are 2011 and 2012. 2011 was 11 years ago and 2012 was 10 years ago at the time that [respondent] notified me that I owed back taxes due to an income adjustment. The IRS does not keep records past 10 years."

Appellant appears to mistakenly believe that respondent was aware of the IRS determinations during a period of time that significantly predates respondent's

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[5] Respondent also reduced appellant's CA AGI for the 2012 tax year by a "self-employed AGI adjustment" of $3,711, which resulted from the adjustments to appellant's Schedule C net income. Neither party contest this adjustment, which is to the benefit of appellant. As a result, OTA does not address it further in this Opinion.

September 6, 2022 NPAs, but failed to notify her. However, appellant's IRS transcripts indicate that the IRS opened examinations of appellant's 2011 and 2012 federal tax returns on July 26, 2013, and February 2, 2014, respectively, and closed the examinations on March 8, 2021. The IRS notified respondent of the determinations on March 2, 2021, and respondent subsequently issued NPAs to appellant on September 6, 2023, within the applicable two-year statute of limitations.[6] Although it is unfortunate that appellant was apparently unaware of the IRS's ongoing examinations of her 2011 and 2012 returns while her bankruptcy remained open, appellant has not provided any information to prove that respondent's corresponding income adjustments are inapplicable under California law, or that respondent's proposed assessments based on the final federal determinations for these years are incorrect. As a result, appellant has not satisfied her burden of proof to establish error in respondent's proposed assessments.

Issue 2: Whether appellant has demonstrated that the ARP should be abated for the 2012 tax year.

When respondent imposes a penalty, it is presumed to have been imposed correctly. (*Appeal of Xie*, 2018-OTA-076P.) 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. (See also *Appeal of Daneshgar*, 2021-OTA-210P.) As relevant here, the penalty applies to any portion of an 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 tax return for the tax year, over the amount of tax that is shown on the return, reduced by any rebate. (IRC, § 6662(d)(2)(A)(i)-(ii).) For an individual taxpayer, an "understatement" constitutes a "substantial understatement" if the amount of the understatement for the tax year exceeds the greater of 10 percent of the tax required to be shown on the return, or $5,000. (IRC, § 6662(d)(1)(A)(i)-(ii).) However, even if an understatement is found to be

[6] If the taxpayer or the IRS reports a change or correction within six months after a final federal determination, respondent may issue an NPA resulting from those adjustments within two years from the date of the notice. (R&TC, § 19059(a).) The date of each final federal determination shall be the date on which each adjustment or resolution resulting from an IRS examination is assessed pursuant to Internal Revenue Code section 6203. (R&TC, § 18622(d).) The IRS made its assessments on March 8, 2021, and informed respondent of them on March 2, 2021. As a result, a two-year statute of limitations applies for respondent to issue NPAs to appellant and began to run on the date respondent was notified of the adjustments on March 2, 2021. (R&TC, § 19059(a).) Respondent issued NPAs to appellant for the 2011 and 2012 tax years on September 6, 2022, within the two-year statute of limitations required by R&TC section 19059(a).

substantial, the penalty shall not be imposed to the extent the taxpayer can show reasonable cause for the underpayment and the taxpayer acted in good faith with respect to that underpayment.[7] (R&TC, § 19164(d); IRC, § 6664(c)(1).)

Here, based upon the IRS determination, respondent determined that appellant was required to report total tax of $6,818 on her 2012 California income tax return; however, appellant only reported tax of $1,615. Appellant's understatement of tax of $5,203 ($6,818 - $1,615) is substantial because it exceeds the greater of 10 percent of the tax required to be reported on the return, which is $681 ($6,818 x 10 percent) or $5,000. As a result, respondent properly imposed a 20 percent ARP of $1,040.60 ($5,203 x 20 percent) based on appellant's substantial understatement of income tax. (IRC, § 6662(b)(2) & (d)(1).)

Appellant asserts that she was unaware of the federal determination for the 2012 tax year but does not argue that respondent improperly calculated or imposed the ARP. Appellant does not argue that she acted with reasonable cause and good faith with respect to her underpayment of tax in 2012 or provide any information which demonstrates that she did so. As a result, appellant has not demonstrated that the ARP should be abated.

Issue 3: Whether appellant has established a legal basis for the abatement of interest.

Interest is not a penalty; it is compensation for a taxpayer's use of money which should have been paid to the state. (*Appeal of Balch*, 2018-OTA-159P.) Interest must be assessed from the date a tax payment is due through the date that it is paid. (R&TC, § 19101.) Imposing interest is mandatory, and respondent cannot abate interest except where authorized by law. (R&TC, § 19101; *Appeal of Balch*, *supra*.) Generally, to obtain relief from interest, a taxpayer must qualify under R&TC section 19104, 21012 or 19112.[8] There is no reasonable cause exception for the abatement of interest. (*Appeal of GEF Operating, Inc.,* 2020-OTA- 057P.)

Appellant does not dispute the calculation of interest, but instead makes a reasonable cause type argument that respondent did not timely notify her of the federal income adjustments, and as a result, the accrual of interest is unfair. On appeal, appellant specifically

[7] While IRC section 6662(d) provides other exceptions or defenses to the ARP (such as substantial authority and adequate disclosure), only the reasonable cause exception is relevant to this appeal.

[8] Under R&TC section 19104, respondent 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 respondent. Under R&TC section 21012, an individual may be relieved from interest if that person reasonably relies on respondent's written advice in response to a written request. Under R&TC section 19112, respondent may waive interest for any period respondent determines that an individual has extreme financial hardship, which OTA does not have jurisdiction to review. (See *Appeal of Moy*, 2019-OTA-057P.)

states, “I am being asked to pay interest that is more than 11 years of interest from the time of the original notification. How is this fair? If [respondent] knew that I owed back taxes due to an income adjustment, why did they take 11 years to tell me?”

Despite appellant’s apparent misunderstanding of the events, as discussed above, the IRS notified respondent of the 2011 and 2012 federal determinations on March 2, 2021. Respondent subsequently issued NPAs to appellant on September 6, 2023, to make corresponding adjustments to appellant’s California tax, penalties, and interest accrued from the original payment due date for each respective year. (R&TC, § 19101.) Respondent is authorized to abate or refund interest under certain circumstances where there has been an unreasonable error or delay in the performance of a ministerial or managerial act by an employee of respondent, a taxpayer relies on respondent’s advice in response to a written request, or the taxpayer has an extreme financial hardship. (R&TC, §§ 19104, 21012, 19112.) However, appellant does not provide any evidence or argument to establish that any of these statutory exceptions apply. Further, as stated above, there is no reasonable cause exception for the abatement of interest.

HOLDINGS

1. Appellant has not demonstrated error in respondent’s proposed assessments for the 2011 and 2012 tax years.
2. Appellant has not demonstrated that the ARP should be abated for the 2012 tax year.
3. Appellant is not entitled to interest abatement for the 2011 and 2012 tax years.

DISPOSITION

Respondent’s actions are sustained.

Signed by:
Seth Elsom
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Seth Elsom
Hearing Officer

We concur:

DocuSigned by:
Steven Kim
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Steven Kim
Administrative Law Judge

DocuSigned by:
Eddy Y. H. Lam
1EAB8BDA3324477...
Eddy Y.H. Lam
Administrative Law Judge

Date Issued: 12/17/2024