

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
C. MUNK AND) OTA Case No. 240215505
D. MACCARONE)
_____)

OPINION

Representing the Parties:

For Appellants: C. Munk
D. Maccarone

For Respondent: Leoangelo C. Cristobal, Attorney

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, C. Munk and D. Maccarone (appellants) appeal an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$7,042, an accuracy-related (AR) penalty of \$1,408.40, and applicable interest for the 2007 taxable year.

Appellants 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. Have appellants shown error in FTB’s proposed assessment, which is based on a final federal determination?
2. Have appellants established a basis to abate the AR penalty?

FACTUAL FINDINGS

1. Appellants filed a timely California Resident Income Tax Return for taxable year 2007.¹
2. On June 21, 2010, FTB received information that the IRS made adjustments to appellants’ 2007 taxable year, which increased appellants’ federal taxable income by \$75,684 and imposed additional tax and an AR penalty.

¹ This fact is taken from FTB’s exhibit A, which it titled 2007 Return Information. Neither party was able to provide a copy of the 2007 tax return upon request by OTA.

3. FTB made corresponding adjustments to appellants' California tax and issued a Notice of Proposed Assessment (NPA) on February 17, 2011. The NPA reflected tax as originally reported of \$4,419, and total revised tax of \$11,461, resulting in proposed additional tax of \$7,042, and an AR penalty of \$1,408.40.
4. Appellants timely protested the NPA indicating that they were working with the IRS, and FTB deferred the matter to await a final federal determination.²
5. On January 23, 2024, FTB issued a Notice of Action affirming the NPA.
6. This timely appeal followed.
7. As of March 12, 2024, the IRS had not reduced or canceled appellants' federal assessment for the 2007 taxable year.

DISCUSSION

Issue 1: Have appellants shown error in FTB's proposed assessment, which is based on a final federal determination?

R&TC section 18622(a) requires California taxpayers to report any IRS changes to their income, deductions, penalties, credits, or tax within six months of those changes becoming final. A proposed FTB assessment based upon a final federal determination is presumed to be correct, and a taxpayer bears the burden of proving that FTB's determination is erroneous. (*Appeal of Dillahunt*, 2024-OTA-024P.) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof with respect to an assessment based on a federal action. (*Ibid.*)

Appellants do not assert that FTB erred in its proposed assessment. Rather appellants contend they paid "all taxes owed up to the date of the settlement [with the IRS]." However, the IRS and FTB are separate tax agencies, with the former handling only federal taxes and the latter handling only California state taxes. Thus, a settlement resolving appellants' federal taxes has no effect on appellants' obligation to pay the proposed state taxes to FTB. Moreover, appellants' federal Account Transcript for the 2007 taxable year shows that as of March 12, 2024, the IRS had not reduced or canceled appellants' federal assessment; rather, the Account Transcript shows payments and credits continuing through April 15, 2020. Therefore, appellants have not established error in FTB's proposed assessment, which OTA sustains.

² The protest is not in OTA's record, but a letter dated November 21, 2023, from FTB to appellants references appellants' protest letter dated April 8, 2011, and FTB's responsive letter deferring the matter on September 27, 2011.

Issue 2: Have appellants established a basis to abate the AR penalty?

Except as otherwise provided, California incorporates Internal Revenue Code (IRC) sections 6662 and 6664, relating to the imposition of an AR penalty on underpayments. (R&TC, § 19164(a)(1)(A), (d)(1); *Appeal of Daneshgar*, 2021-OTA-210P.) As relevant here, the AR penalty applies to the portion of the underpayment of tax attributable to any 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 taxable year, less the amount of tax imposed which is shown on the return, reduced by any rebate. (IRC, § 6662(d)(2)(A)(i)-(ii).) For individual taxpayers, an “understatement” constitutes a “substantial understatement” if the amount of the understatement exceeds the greater of \$5,000, or 10 percent of the tax required to be shown on the return. (IRC, § 6662(d)(1)(A)(i)-(ii).) In determining whether there is a substantial understatement, the taxpayer may exclude that portion of the understatement attributable to: (1) the tax treatment of any item for which there is or was substantial authority for such treatment; or (2) any item for which the relevant facts affecting the item’s tax treatment were adequately disclosed in the tax return (or in a statement attached to the return), and for which there is a reasonable basis for the tax treatment of such item. (IRC, § 6662(d)(2)(B)(i)-(ii).) In addition, “[n]o penalty shall be imposed under [IRC] section 6662 . . . with respect to any portion of an underpayment if it is shown that there was a reasonable cause for such portion and that the taxpayer acted in good faith with respect to such portion.” (R&TC, § 19164(d)(1); IRC, § 6664(c)(1).)

Here, appellants provide no argument or evidence that shows they are entitled to relief under the statutes noted above. Appellants’ understatement of tax for 2007 (\$7,042) exceeds both thresholds to make it a substantial understatement. The understatement was more than 60 percent³ of the amount required to be shown on the return and above \$5,000, so FTB properly imposed the penalty. Appellants have not established a basis to abate the AR penalty.


³ \$7,042 divided by \$11,461 = 61.44%.

HOLDINGS

1. Appellants have not shown error in FTB’s proposed assessment, which is based on a final federal determination.
2. Appellants have not established a basis to abate the AR penalty.


DISPOSITION

FTB’s action is sustained.


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 Teresa A. Stanley
 Administrative Law Judge

We concur:

DocuSigned by:

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 Erica Parker
 Hearing Officer

Signed by:

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 Natasha Ralston
 Administrative Law Judge

Date Issued: 4/15/2025