

2. Subsequently, FTB received federal tax information from the IRS indicating that the IRS disallowed various Schedule C expenses on appellant's federal tax return, resulting in additional income in the amount of \$55,065 for the 2010 tax year.
3. FTB issued a Notice of Proposed Assessment (NPA) which followed the IRS adjustments. The NPA proposed to revise appellant's taxable income to \$51,763, resulting in a proposed tax of \$2,558. FTB also proposed an accuracy-related penalty in the amount of \$511.60, plus interest.
4. Appellant protested the NPA, stating that "no validity exists here." FTB responded that its proposed assessment was based on information it received from the IRS, and asked appellant to provide information demonstrating the IRS had either cancelled or reduced its assessment. When appellant did not respond, FTB issued a Notice of Action affirming the NPA on October 30, 2023.
5. This timely appeal followed.

DISCUSSION

Issue 1: Whether appellant established error in FTB's assessment of additional tax, which is based on a final federal determination.

R&TC section 18622(a) provides that a taxpayer must either concede the accuracy of a final federal determination or state why it is erroneous. It is well settled that a deficiency assessment based on federal adjustments to income is presumptively correct and that the taxpayer bears the burden of proving that the determination is erroneous. (*Appeal of Gorin*, 2020-OTA-018P.) In the absence of credible evidence showing that FTB's determination is incorrect, it must be upheld. (*Appeal of Valenti*, 2021-OTA-093P.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof with respect to a deficiency assessment based on a federal action. (*Appeal of Gorin*, *supra*.)

In this appeal, FTB's proposed assessment was based on a final federal determination, and appellant has the burden of proving that FTB's proposed assessment is incorrect. Here, appellant's only argument in support of his position in this appeal was provided on OTA's appeal form. On that form, appellant only wrote "inaccurate reporting" as the basis for his position. Appellant does not expand on what he means and does not provide any supporting

documentation to indicate what it is that he claims is inaccurate.² As such, appellant has not met his burden of proof to establish error in FTB's assessment of additional tax.

Issue 2: Whether appellant has established that the accuracy-related penalty should be abated.

Internal Revenue Code (IRC) section 6662, incorporated into California law by R&TC section 19164, provides for an accuracy-related penalty of 20 percent of the applicable underpayment. IRC section 6662(b)(1) & (2) provides, in relevant part, that the penalty applies to the portion of the underpayment attributable to negligence or disregard of rules or regulations or the substantial understatement of income tax. Negligence includes any failure to make a reasonable attempt to comply with tax laws. (*Appeal of Dillahunty*, 2024-OTA-024P.) When FTB's proposed assessment is based on a federal determination that imposed the penalty based on negligence, FTB's imposition of the penalty based on negligence is presumed correct. (*Ibid.*) An accuracy-related penalty imposed based on negligence can be abated if a taxpayer can show a reasonable basis for the taxpayer's reporting position, or reasonable cause and good faith. (*Ibid.*)

FTB imposed the penalty following an IRS-imposed accuracy-related penalty based on negligence in the amount of \$511.60. Appellant does not argue that the penalty was improperly imposed or calculated. Appellant has not argued, and the evidence does not show, that any exception to this penalty might potentially apply. Therefore, the accuracy-related penalty cannot be abated.

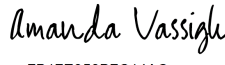
² Appellant's argument at protest is not considered an argument on appeal. However, in the interest of attempting to find a basis for appellant's very brief argument in this appeal, OTA looked at his protest argument in the evidentiary record and found no further insight there.

HOLDINGS

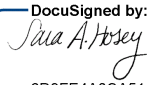
1. Appellant has not established error in FTB’s assessment of additional tax, which is based on a final federal determination.
2. Appellant has not established that the accuracy-related penalty should be abated.

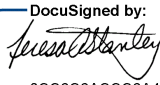
DISPOSITION

FTB’s action is sustained.

DocuSigned by:

7B47E069B7C14AC...
 Amanda Vassigh
 Administrative Law Judge

We concur:

DocuSigned by:

6D3FE4A0CA514E7
 Sara A. Hosey
 Administrative Law Judge

DocuSigned by:

0CC6C6ACC6A44D
 Teresa A. Stanley
 Administrative Law Judge

Date Issued: 8/20/2025