

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 230112343
C. GLATZHOFFER)
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OPINION

Representing the Parties:

For Appellant: C. Glatzhofer, Attorney

For Respondent: Amelia Breen, Attorney
Vivian Ho, Attorney

For Office of Tax Appeals: Tom Hudson, Attorney

A. VASSIGH, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, C. Glatzhofer (appellant) appeals actions by the Franchise Tax Board (FTB) proposing additional tax of \$5,305, an accuracy-related penalty of \$1,061, and applicable interest for the 2011 tax year, and additional tax of \$3,575, an accuracy-related penalty of \$715, and applicable interest for the 2012 tax year.

Office of Tax Appeals (OTA) Panel Members Seth Elsom, Sara A. Hosey, and Amanda Vassigh held an oral hearing in Cerritos, California on September 10, 2025. 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 appellant has shown error in the proposed assessments for tax years 2011 or 2012, which were based on federal adjustments.
2. Whether appellant has shown that the accuracy-related penalties for tax years 2011 or 2012 should be abated or reduced.

FACTUAL FINDINGS

1. For 2011, appellant filed a timely California Resident Income Tax Return reporting California taxable income.
2. During the years at issue, appellant was the owner and CEO of C corporation MainStreet Enterprises (Corporation).¹
3. Subsequently, FTB received information from the IRS indicating that appellant's federal income tax return for 2011 had been audited by the IRS. Appellant's federal taxable income had been increased, resulting in additional federal tax and a federal accuracy-related penalty. The specific IRS adjustments included an increase in ordinary dividends and an increase in Schedule C gross receipts, along with a reduction for one-half of the self-employment tax. This information is shown on the FEDSTAR IRS Data Sheet for tax year 2011, which lists an FTB received date of December 7, 2015.
4. On the basis of this IRS audit information, FTB issued a Notice of Proposed Assessment (NPA) for tax year 2011 on February 16, 2017, that applied the federal adjustments to appellant's 2011 California return. The 2011 NPA made corresponding increases to appellant's California taxable income for the dividends and schedule C gross receipts, and reduced California taxable income by one half of the increase to self-employment tax (as determined by the IRS's federal examination).² The 2011 NPA proposed additional tax of \$5,305 and an accuracy-related penalty, plus interest.
5. For 2012, appellant filed a timely California Resident Income Tax Return reporting California taxable income.
6. Subsequently, FTB received information from the IRS indicating that appellant's federal income tax return for 2012 had been audited by the IRS. Appellant's federal taxable income had been increased by the addition of ordinary dividends, resulting in additional federal tax and a federal accuracy-related penalty. This information is shown on the FEDSTAR IRS Data Sheet for tax year 2012, which FTB received on December 7, 2015.
7. On the basis of this IRS audit information, FTB issued an NPA for tax year 2012 on February 16, 2017, that applied the federal adjustments to appellant's 2012 California return. The 2012 NPA increased appellant's reported taxable income based on income

¹ Appellant's specific ownership in Corporation cannot be determined by the record in this appeal, and it is not material to the determination here. As a result, OTA does not further address it.

² The increase to self-employment tax is not reported as a separate line item on the NPA, and OTA cannot determine if FTB has assessed it. Any omission of the self-employment tax is to appellant's benefit, so OTA does not further address it.

- from ordinary dividends. The 2012 NPA proposed additional tax of \$3,575 and an accuracy-related penalty of \$715, plus interest.
8. Appellant protested the NPA for each tax year, arguing that the IRS determination was erroneous.
 9. FTB issued Notices of Action for tax years 2011 and 2012 on December 29, 2022, and this timely appeal followed.
 10. On appeal, appellant submits a document filed with the U.S. Tax Court on January 23, 2017, entitled “Joint Stipulation of Settled Issues,” indicating that the IRS and Mainstreet Enterprises stipulated that the corporation owed no additional federal taxes or penalties for the tax years that ended on August 31, 2011, and August 31, 2012. The stipulation further states, “The parties agree that petitioner [Mainstreet Enterprises] had total gross receipts . . . for the taxable years ended on August 31, 2011, and August 31, 2012, respectively.” The stipulation does not mention dividends and does not mention appellant’s individual tax liabilities.
 11. On appeal, appellant also submits a signed letter from D. Rockafellor dated March 30, 2021, stating, “I can confirm that the 1099-K merchant account income from American Express of \$22,030 reported to the IRS as additional Sch C1 – Gross Receipts or Sales to [appellant] for the tax year 2011 was from a merchant account at said office space shared by [appellant] and myself and I included that income of \$22,030 from American Express on my 2011 federal and state income tax returns.”
 12. On appeal, FTB submits a record that lists the California tax returns filed by D. Rockafellor and no return is listed for the 2011 tax year. FTB has no record of receiving a tax return for 2011 from D. Rockafellor and no such tax return has been provided for this appeal.
 13. On appeal, FTB also submits appellant’s IRS Account Transcripts for tax years 2011 and 2012, both dated February 1, 2024.

DISCUSSION

Issue 1: Whether appellant has shown error in the proposed assessments for tax years 2011 or 2012, which were based on federal adjustments.

R&TC section 18622(a) provides that a taxpayer shall either concede the accuracy of a federal determination or state how it is erroneous. A proposed assessment based on federal adjustments to income is presumptively correct and a taxpayer bears the burden of proving that the determination is erroneous. (*Appeal of Gorin*, 2020-OTA-018P.) Unsupported assertions

are insufficient to satisfy a taxpayer's burden of proof with respect to an assessment based on a federal action. (*Ibid.*) A taxpayer's failure to produce evidence that is within the taxpayer's control gives rise to a presumption that such evidence, if provided, would be unfavorable to the taxpayer's case. (*Appeal of Morosky*, 2019-OTA-312P.)

In this appeal, appellant argues that FTB lacks substantial justification for its position. However, FTB's position is based on the final federal determinations that are shown on the FEDSTAR IRS Data Sheet and the IRS Account Transcript for each tax year, which have been provided for this appeal. These documents provide the basis for FTB's position. There is no evidence showing that the IRS reduced, cancelled, or modified the federal determinations.

Appellant asserts that an IRS stipulation in the U.S. Tax Court proves that his IRS audit determinations should have been revised, even though they were not revised (according to the FEDSTAR IRS Data Sheet and the IRS Account Transcript for the tax years at issue). Appellant provided documentation showing that in 2017, the IRS stipulated before the U.S. Tax Court that the Mainstreet Enterprises corporation owed no additional federal taxes or penalties for the tax years that ended on August 31, 2011 and August 31, 2012. The stipulation also states the precise amount of the corporation's gross receipts for those same tax years.

However, appellant has not shown how this IRS stipulation concerning this corporation has any bearing on the proposed assessments at issue. Appellant has not shown any relationship between the *corporation's* gross receipts and *his personal income or personal tax liability*, nor provided the corporate books or records. OTA has no ability to review the corporate records; cannot speculate as to whether dividends were paid; whether errors occurred in the corporation's IRS audit; whether the IRS stipulated in Tax Court to a reduction of the corporation's gross receipts in order to recast them as "constructive dividends" received by appellant; nor determine the relationship³ (if any) between the corporate income and appellant's personal income for any tax year.

³ At the hearing, appellant explained that the funds relevant to the IRS stipulation were constructive dividends. In his briefing for this appeal, appellant discussed the distinctions between ordinary and qualified dividends, and constructive dividends. However, OTA does not delve into a discussion on the type of dividends since the proposed assessment would remain the same regardless of the type of dividends.

Appellant's argument appears to be that the dividends were the result of income that the IRS had erroneously "double counted" due to Corporation's transfer of income from "credit card" to payroll. Appellant contended at the hearing that as a result, the IRS agreed in Tax Court to reduce the gross receipts (presumably the source of the constructive dividends assessment). Appellant concluded that the Tax Court's decision proves he did not receive constructive dividends, but as appellant did not provide the complete Tax Court decision, OTA cannot determine whether this is the case.

Appellant asserts that he once shared an office with D. Rockefeller, who allegedly received income from American Express, which the IRS erroneously added to appellant's Schedule C gross receipts or sales for the 2011 tax year. The letter from D. Rockefeller, dated March 30, 2021, states that D. Rockefeller included this income on his own state and federal income tax returns for 2011. However, D. Rockefeller's tax returns have not been provided for this appeal and FTB has no record of receiving his tax return for 2011. No documentation or corroborating evidence has been provided to show that appellant did not receive the income, or that he received it but somehow transferred it to D. Rockefeller. Indeed, the financial relationship between appellant and D. Rockefeller is unclear and appellant has not explained how funds could have flowed through to D. Rockefeller, regardless of whether or not they shared an office.

Appellant argues that the proposed assessments for 2011 and 2012 are barred by the applicable statute of limitations. Generally, FTB must issue a proposed assessment within four years of the date the taxpayer filed his California tax return. (R&TC, § 19057.) However, if the IRS makes a change or correction to any item required to be shown on a federal return, a taxpayer must report the federal change to FTB within six months after the date it becomes final. (R&TC, § 18622(a).) R&TC section 19059(a) provides for a two-year statute of limitations for the notice of proposed deficiency assessment from FTB if the taxpayer or the IRS reports the change or correction to FTB within six months after the final federal determination. R&TC section 19060(b) provides for a four-year statute of limitations for the notice of proposed deficiency assessment from FTB if a taxpayer or the IRS reports a final federal determination *after* the six-month period specified in R&TC section 18622(a).

According to the IRS Account Transcripts, the dates of the final federal determinations for tax years 2011 and 2012 were November 1, 2015, and November 16, 2015, respectively. The FEDSTAR IRS data sheets show that the IRS notified FTB of the 2011 and 2012 federal determinations on December 7, 2015. Because the IRS notified FTB of the 2011 and 2012 federal adjustments within six months of the final federal determinations, FTB had until two years from the date of the IRS notification to issue the 2011 and 2012 proposed assessments. (R&TC, § 19059(a).) The NPAs for 2011 and 2012 were issued on February 16, 2017, which is less than two years after the final federal determinations. Each proposed assessment was therefore issued in a timely manner under the applicable statute of limitations.

Appellant argues that he did not receive the IRS Notices of Deficiency (NOD) in a timely manner, that FTB did not have the right to assume appellant had actual notice of a federal NOD, and therefore FTB could not adjust his income. However, this is not the law. Appellant does not

cite any legal authority in support of his position. When asked at the hearing whether appellant could point to legal authority in support of his argument, appellant referred to U.S. Postal Service Form 3877 (Firm Mailing Book For Accountable Mail) (PS Form 3877). PS Form 3877 is used to streamline the mailing process for bulk mail and provides documentation for claims if mail is lost or damaged.⁴ PS Form 3877 is not relevant to this appeal because a taxpayer's receipt of federal notices does not impact the statutes of limitation that FTB must comply with.

California's statutes of limitations are not contingent upon the date when the taxpayer actually received, or should have received, a notice from the IRS. Because FTB issued each of the two NPAs less than two years after the date of the final federal determinations, and less than two years after FTB was notified by the IRS of the final determinations, FTB complied with the statute of limitations for each proposed assessment and they must be considered timely.

Appellant also argues that FTB is equitably estopped from denying appellant's assertions with respect to D. Rockafellor, who claims to have received and reported income of \$22,030 that the IRS added to appellant's Schedule C gross receipts or sales for 2011. Equitable estoppel is applied against the government only in rare and unusual circumstances and when its application is necessary to prevent manifest injustice. (*Appeal of Sedillo*, 2018-OTA-101P.) The four elements of equitable estoppel are: (1) the government agency (FTB) must be shown to have been aware of the actual facts; (2) the government agency (FTB) must be shown to have made an incorrect or inaccurate representation to the relying party (appellant) and intended that its incorrect or inaccurate representation would be acted upon by the relying party or have acted in such a way that the relying party had a right to believe that the representation was so intended; (3) the relying party (appellant) must be shown to have been ignorant of the actual facts; and (4) the relying party (appellant) must be shown to have detrimentally relied upon the representations or conduct of the government agency (FTB). (*Ibid.*) The party asserting an estoppel bears the burden of proof and, thus, appellant must establish each of these four elements. (*Ibid.*)

Appellant has not established any of the four elements of equitable estoppel. Most critically, appellant has not provided any evidence that FTB made an incorrect or inaccurate representation to appellant with regard to the statements or actions of D. Rockafellor. There is

⁴ OTA takes judicial notice of the U.S. Postal Service's description of PS Form 3877, Firm Mailing Book for Accountable Mail. It describes it as "a multipage bound book used to mailing multiple pieces of mail at the same time that have Extra Services such as Certified Mail, COD, Priority Mail Express, and Insured Mail pieces. The use of the book or electronic facsimiles eliminates the need to generate individual mailing receipts for each article." (<https://faq.usps.com/s/article/What-is-a-Firm-Mailing-Book>.)

no evidence that appellant relied on any such representation from FTB, so the doctrine of equitable estoppel does not apply here.

Appellant has not met his burden of showing error in the IRS audit adjustments that FTB relied on for the proposed assessments, and he has not shown error in the proposed assessments, so appellant cannot prevail on this issue.

Issue 2: Whether appellant has shown that the accuracy-related penalties for tax years 2011 or 2012 should be abated or reduced.

When FTB imposes a penalty, it is presumed to have been imposed correctly. (*Appeal of Xie*, 2018-OTA-076P.) The taxpayer bears the burden of proving any defenses to the imposition of the accuracy-related penalty. (*Recovery Group, Inc. v. Commissioner*, T.C. Memo. 2010-76.)

R&TC section 19164 generally incorporates the provisions of Internal Revenue Code (IRC) section 6662, which provides for an accuracy-related penalty of 20 percent of the applicable underpayment of tax. The accuracy-related penalty may be reduced or abated with respect to any portion of an underpayment if it is shown that there was reasonable cause for such portion and that the taxpayer acted in good faith with respect to such portion. (IRC, § 6664(c)(1).)

As relevant here, the penalty applies to underpayments that are attributable to negligence or disregard of rules or regulations. (IRC section 6662(b)(1).)⁵ IRC section 6662(c) states that “the term ‘negligence’ includes any failure to make a reasonable attempt to comply with the provisions of [the IRC], and the term ‘disregard’ includes any careless, reckless, or intentional disregard.” Under Treasury Regulation section 1.6662-3(b), negligence is defined to include “any failure to make a reasonable attempt to comply with the provisions of the internal revenue laws or to exercise ordinary and reasonable care in the preparation of a tax return.” The term negligence “also includes any failure by the taxpayer to keep adequate books and records or to substantiate items properly.” (*Ibid.*)

Here, appellant was required to report total tax of \$5,879 on his 2011 California return and total tax of \$3,879 on his 2012 California return, but he reported a tax of \$574 on his 2011 California return and a tax of \$304 on his 2012 California return. Thus, appellant’s understatement of tax is not a substantial understatement for either tax year. The IRS imposed a federal accuracy-related penalty for each tax year, so FTB imposed the corresponding

⁵ 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. (IRC, § 6662(d)(1).)

California accuracy-related penalty based on the federal determination. FTB asserts that appellant's Individual Master File (IMF) transcripts for tax years 2011 and 2012 provide a code indicating that the IRS assessed federal accuracy-related penalties based on negligence, rather than on substantial understatements. FTB contends that, based on the federal penalties, it may also impose accuracy-related penalties based on negligence.


Pursuant to R&TC section 18622(a), if any item required to be shown on a federal tax return, including any penalty, is changed or corrected by the IRS, the taxpayer shall concede the accuracy of the determination or state wherein it is erroneous. When FTB's proposed assessment is based on a federal determination that imposed the accuracy-related penalty based on negligence, FTB's imposition of the penalty based on negligence is presumed correct. (*Appeal of Dillahunty*, 2024-OTA-024P.) Here, appellant's IMF transcripts show that the IRS imposed the accuracy-related penalties for tax years 2011 and 2012 based on negligence. FTB thus properly imposed accuracy-related penalties for tax years 2011 and 2012 based on negligence or disregard of rules or regulations. Appellant does not provide any argument or evidence to show reasonable cause and good faith with respect to the underpayment for either tax year. Therefore, the accuracy-related penalties cannot be abated.

HOLDINGS

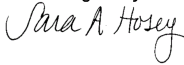
1. Appellant has not shown error in the proposed assessments for tax years 2011 or 2012, which were based on federal adjustments.
2. Appellant has not shown that the accuracy-related penalties for tax years 2011 or 2012 should be abated or reduced.


DISPOSITION

FTB's actions are sustained for both the 2011 and 2012 tax years.

DocuSigned by:

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 Amanda Vassigh
 Administrative Law Judge

We concur:

DocuSigned by:

8D3FE4A0CA514E7...
 Sara A. Hosey
 Hearing Officer

Signed by:

C041CD132E3254FD...
 Seth Elsom
 Administrative Law Judge

Date Issued: 12/3/2025