

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of: )  
**J. RICHARDSON** ) OTA Case No. 21057773  
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**OPINION**

Representing the Parties:

For Appellant: J. Richardson  
For Respondent: Tristen Thalhuber, Attorney

H. FAMULARO, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, J. Richardson (appellant) appeals an action by the Franchise Tax Board (respondent) proposing additional tax of \$690, an accuracy-related penalty of \$138, and applicable interest for the 2016 tax year.<sup>1</sup>

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).

**ISSUE**

Whether appellant has established error in respondent’s proposed assessment for the 2016 tax year, which is based on a final federal determination.

**FACTUAL FINDINGS**

1. Appellant received a Form 1099-MISC, Miscellaneous Information (Form 1099-MISC), which reported that he received nonemployee compensation of \$7,849 in 2016.
2. Appellant timely filed a California Resident Income Tax Return for 2016, on which he reported his wage income but did not report the nonemployee compensation of \$7,849.

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<sup>1</sup> On appeal, respondent concedes the proposed accuracy-related penalty because of appellant’s Chapter 13 bankruptcy discharge on June 4, 2024. Because appellant does not specifically contest interest, it is not addressed in this Opinion.

3. The IRS audited appellant's 2016 federal return and made adjustments to appellant's income based on appellant's failure to report his nonemployee compensation of \$7,849.
4. Based on appellant's unreported nonemployee compensation, the IRS assessed additional tax of \$2,919 and an accuracy-related penalty of \$584 for 2016 on November 19, 2018.
5. Appellant did not file an amended 2016 California return or notify respondent of the IRS's final determination.
6. The IRS subsequently notified respondent of its adjustments to appellant's income and assessment for 2016, but the date of that notification is not in the record.
7. Appellant filed a Chapter 13 bankruptcy petition on March 12, 2019, and received a discharge on June 4, 2024.
8. Appellant fully paid the federally assessed additional tax of \$2,919, and applicable interest, for 2016 during his bankruptcy proceeding.
9. After appellant's bankruptcy discharge, the IRS removed the assessed accuracy-related penalty of \$584 for 2016.
10. On June 4, 2020, respondent issued a Notice of Proposed Assessment (NPA) to appellant based on the IRS's final determination for the 2016 tax year, which proposed: (1) an increase to income for the nonemployee compensation of \$7,849; (2) a self-employment tax deduction of \$422; (3) additional tax of \$690; (3) an accuracy-related penalty of \$138 (which respondent has conceded on appeal in this case); and (4) applicable interest.
11. Appellant filed a timely protest in response to the NPA. In the protest, appellant asserted respondent did not identify the source of the additional income. He also appeared to argue that the tax for this additional income had already been satisfied through respondent's garnishment of his wages, or, alternatively, that the 2016 proposed assessment is barred by the statute of limitations.
12. By letter dated February 26, 2021, respondent responded to appellant's protest. Respondent stated that its proposed adjustments in the NPA are based on the IRS's income adjustments and assessment for appellant's 2016 tax year. Respondent enclosed copies of the IRS's Wage and Income Transcript and Account Transcript for appellant's 2016 tax year, which lists the 2016 Form 1099-MISC reporting appellant's nonemployee compensation of \$7,849 and the resulting federal adjustments and

assessment for appellant's 2016 tax year.<sup>2</sup> Respondent provided appellant 30 days to respond with additional information. Appellant did not respond.

13. On April 29, 2021, respondent issued a Notice of Action (NOA) affirming the NPA.
14. This timely appeal followed.
15. On appeal, respondent provides the following: (1) appellant's Chapter 13 bankruptcy petition filed on March 12, 2019 (bankruptcy petition); (2) appellant's Chapter 13 bankruptcy discharge order entered on June 4, 2024 (bankruptcy discharge order); and (3) an IRS Transcript of Account for appellant's 2016 tax year dated December 3, 2024.

### DISCUSSION

R&TC section 18622(a) provides that a taxpayer shall either concede the accuracy of a federal determination or state where it is erroneous. It is well settled that respondent's proposed assessment based on a federal determination is presumed to be correct and a taxpayer bears the burden of proving that the determination is erroneous. (*Appeal of Valenti*, 2021-OTA-093P.) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof. (*Appeal of Mazer*, 2020-OTA-263P.) In the absence of credible, competent, and relevant evidence showing that respondent's proposed assessment is incorrect, it must be sustained. (*Appeal of Bracamonte*, 2021-OTA-156P.) A taxpayer's failure to produce evidence that is within the taxpayer's control gives rise to a presumption that such evidence is unfavorable to his case. (*Appeals of Kwon, et al.*, 2021-OTA-296P.)

Respondent proposed additional tax and an accuracy-related penalty based on the IRS's adjustments to appellant's income and assessment for 2016. The IRS removed appellant's assessed accuracy-related penalty for 2016 but did not adjust or cancel its assessment of additional tax for 2016. Respondent's proposed assessment based on this final federal determination is presumed correct. (See *Appeal of Valenti, supra*.)

On appeal, appellant argues that respondent's proposed additional tax for 2016 was satisfied when either respondent garnished his wages in 2019 or it was discharged in bankruptcy. On appeal, respondent concedes the proposed accuracy-related penalty. Respondent, however, disagrees that the proposed additional tax of \$690 has been satisfied. In

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<sup>2</sup> The federal Account Transcript for appellant's 2016 tax year, dated May 26, 2021, does not reflect that the federal adjustments have been adjusted or cancelled. On appeal, however, respondent provides an updated federal Account Transcript for appellant's 2016 tax year, dated December 3, 2024, which reflects: (1) the federal assessment of additional tax based on appellant's additional income for 2016 has not been adjusted or cancelled and was paid in full through appellant's bankruptcy proceeding; and (2) the federal assessment of the accuracy-related penalty was removed after appellant's bankruptcy discharge.

addition, respondent argues that OTA does not have subject matter jurisdiction to address whether appellant's proposed additional tax for 2016 was discharged in bankruptcy.

Appellant provides no evidence to support his allegations that the proposed additional tax for 2016 was satisfied through his alleged wage garnishment in 2019. Indeed, the evidence in the record supports the opposite conclusion. Appellant did not timely notify respondent of the IRS's final determination. After the IRS notified respondent of its final determination for appellant's 2016 tax year, respondent issued the NPA and NOA on June 4, 2020, and April 29, 2021, respectively. Appellant appealed the NOA. Accordingly, respondent's proposed additional tax for 2016 has not become final for respondent to commence collection action. (See R&TC, § 19049.) Therefore, any funds collected through appellant's alleged wage garnishment in 2019 would not have been applied to the 2016 tax year. Furthermore, OTA lacks subject matter jurisdiction to address whether appellant's proposed additional tax for 2016 was discharged in bankruptcy. (Cal. Code Regs., tit. 18, § 30104(k); *Appeal of Savage*, 2020-OTA-328P.)<sup>3</sup> Thus, appellant has not met his burden of proving that the proposed additional tax for 2016 has been satisfied.

Appellant further argues that respondent "had [its] chance to collect." Respondent generally must mail an NPA within four years of the date the taxpayer files their California return. (R&TC, § 19057(a).) However, respondent is also allowed at least two years to issue an NPA if the IRS reports a change in a taxpayer's federal income or deductions, even if it is beyond that general four-year window.<sup>4</sup> (See R&TC, §§ 19059(a), 19060(b).)

On November 19, 2018, the IRS assessed additional tax of \$2,919 for appellant's 2016 taxable year. Appellant did not inform respondent of these federal adjustments. Rather, the IRS notified respondent of its final determination, which formed the basis of respondent's proposed assessment. The record does not contain the date when the IRS informed respondent of its final determination. Nevertheless, because respondent issued its NPA on June 4, 2020, which is within two years of the IRS's assessment on November 19, 2018,

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<sup>3</sup> To the extent appellant argues that the proposed tax for 2016 was satisfied through his bankruptcy proceeding, the record does not support such a finding because appellant's bankruptcy petition lists his California income tax liabilities for 2009 through 2015 but not for 2016.

<sup>4</sup> If the IRS changes a taxpayer's federal income or deductions and the taxpayer or the IRS reports a change or correction to respondent 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 the final federal determination is 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).) If neither the taxpayer nor the IRS notifies respondent of the federal changes within six months of a final federal determination, respondent may issue an NPA within four years of the date when it receives notification of the federal changes. (R&TC, § 19060(b).)

respondent timely issued the NPA. (See R&TC, §§ 19059(a), 19060(b).) Thus, respondent’s proposed assessment for 2016 is timely.


Therefore, appellant has failed to carry his burden of proving that the proposed assessment, which is based on a final federal determination, is incorrect.

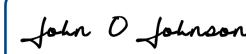
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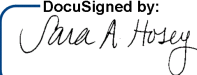
Appellant has not established error in respondent’s proposed assessment for the 2016 tax year, which is based on a final federal determination. However, based on respondent’s concession, respondent’s proposed assessment is modified to reflect that appellant is not liable for the accuracy-related penalty for 2016.

DISPOSITION

Respondent’s proposed assessment is modified to remove the accuracy-related penalty for 2016, but is otherwise sustained.

Signed by:  
  
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Hans Famularo  
Administrative Law Judge

We concur:  
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John O. Johnson  
Administrative Law Judge

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Sara A. Hosey  
Administrative Law Judge

Date Issued: 3/5/2026