

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:	)	OTA Case No. 230312766
S. STIRES	)	
	)	
	)	
	)	
	)	

OPINION

Representing the Parties:

For Appellant:	S. Stires
For Respondent:	Christopher T. Tuttle, Attorney
For Office of Tax Appeals:	Jacqueline Watson, Graduate Student Assistant

S. HOSEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, S. Stires (appellant) appeals actions by respondent Franchise Tax Board (FTB) proposing additional tax of \$6,565, an accuracy-related penalty of \$1,313, and applicable interest for the 2015 tax year, and additional tax of \$21,814, an accuracy-related penalty of \$4,362.80, and applicable interest for the 2016 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, (Regulation) section 30209(a).

ISSUES

1. Whether appellant has demonstrated error in FTB's proposed assessments for the 2015 and 2016 tax years, which are based on federal adjustments.
2. Whether appellant has established a basis for abatement of the accuracy-related penalties.

FACTUAL FINDINGS

1. Appellant filed a 2015 California Resident Income Tax Return on October 15, 2016, reporting a total tax due of \$217. Appellant remitted payment of \$220.69 on January 19, 2017.

2. The IRS subsequently audited appellant for the 2015 tax year, which resulted in an additional tax assessment and accuracy-related penalty for the 2015 tax year.
3. Appellant filed a 2016 California Resident Income Tax Return on October 15, 2017, reporting an overpayment of \$10,642, which FTB refunded on November 15, 2017.
4. FTB then received information that the IRS had made further changes to appellant's 2015 and 2016 tax years.
5. Based on the IRS information, on July 22, 2021, FTB issued NPAs which increased appellant's taxable income for the 2015 and 2016 tax years. These adjustments resulted in additional tax in the amount of \$6,565, an accuracy-related penalty of \$1,313, plus interest for the 2015 tax year and additional tax of \$21,814, an accuracy-related penalty of \$4,362, plus interest for the 2016 tax year.
6. On September 7, 2021, appellant filed a timely protest of the NPAs for tax years 2015 and 2016.
7. FTB issued NOAs affirming its proposed assessments for the 2015 and 2016 tax years.

DISCUSSION

Issue 1: Whether appellant has demonstrated error in FTB's proposed assessments for the 2015 and 2016 tax years, which are based on federal adjustments.

R&TC section 18622(a) states that if the IRS makes adjustments to a taxpayer's return, the taxpayer must report the adjustments to FTB. Appellant then must either concede the accuracy of a final federal determination or state where the determination is erroneous. (*Appeal of Black*, 2023-OTA-023P.) A deficiency assessment by FTB based on a federal adjustment to income is presumed to be correct, and a taxpayer bears the burden of proving FTB's determination is erroneous. (*Appeal of Valenti*, 2021-OTA-093P.) Unsubstantiated assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Bracamonte*, 2021-OTA-156P.)

On appeal, appellant does not provide any evidence or assertions suggesting error in FTB's proposed assessments or the federal changes on which they are based. Appellant only argues that he would have included these tax years as part of a bankruptcy action had he known about them at the time.¹ Appellant states that he is willing to settle for a lesser amount.

¹ FTB argues that OTA does not have jurisdiction to determine whether a liability has been discharged in bankruptcy. Even though it does not appear appellant is arguing jurisdiction, OTA clarifies that under Regulation section 30104(h), OTA lacks jurisdiction to consider whether a liability has been or should have been discharged in bankruptcy. (*Appeal of Savage*, 2020-OTA-328P.) Therefore, OTA does not address this issue further.

However, OTA lacks authority to make discretionary adjustments to the amount of a tax assessment based on a taxpayer's ability to pay. (*Appeal of Robinson*, 2018-OTA-059P.) OTA's function in the appeals process is to determine the correct amount of the taxpayer's California income tax liability. (*Ibid.*)² Based on appellant's 2015 and 2016 federal Account Transcripts submitted by FTB, there is no indication that the IRS is currently reviewing or considering additional adjustments either tax year after assessing additional tax. Appellant submits no evidence of error in the federal adjustments, or FTB's adjustments based thereon.

Issue 2: Whether appellant has established a basis for abatement of the accuracy-related penalties.

California conforms to Internal Revenue Code (IRC) section 6662(d)(1), which provides that there is a substantial understatement of income tax for any taxable year if the amount of the understatement exceeds the greater of (i) 10 percent of the tax required to be shown on the return for the taxable year, or (ii) \$5,000. (R&TC, § 19164(a)(1)(A).) A substantial understatement of tax can be reduced upon a taxpayer's showing of substantial authority, adequate disclosure with a reasonable basis for the position taken, or reasonable cause and good faith with respect to the underpayment. (IRC, § 6662(d)(2)(B).)

Appellant's understatements of California income tax were \$6,565 for tax year 2015 and \$21,814 for tax year 2016. Both amounts exceed the \$5,000 threshold under IRC section 6662 (d)(1). For the 2015 tax year, the proposed tax of \$6,565 exceeds 10 percent of the \$25,269 tax required to be shown on the return. For the 2016 tax year, the proposed tax of \$21,814 exceeds 10 percent of the \$30,386 tax required to be shown on the original 2016 return. Therefore, FTB properly assessed an accuracy-related penalty of \$1,313 for tax year 2015 and \$4,362.80 for tax year 2016 for substantial understatements pursuant to R&TC section 19164.

Appellant has not asserted any defense to the accuracy-related penalties. Therefore, appellant has not demonstrated that the accuracy-related penalties for tax years 2015 and 2016 should be abated.

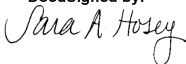
² FTB has its own offer in compromise program, which considers a taxpayer's ability to pay; however, OTA has no jurisdiction over this program. (See <https://www.ftb.ca.gov/forms/misc/4045.html>)

HOLDINGS

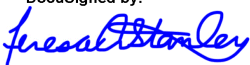
1. Appellant has not demonstrated error in FTB's proposed assessments for the 2015 and 2016 years.
2. Appellant has not established a basis for abatement of the accuracy-related penalties.

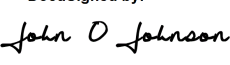
DISPOSITION

FTB's actions are sustained in full.

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Sara A. Hosey
Administrative Law Judge

We concur:

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Teresa A. Stanley
Administrative Law Judge

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John O. Johnson
Administrative Law Judge

Date Issued: 4/27/2026