

In the Matter of the Appeal of:) OTA Case No. 230513437
T. TRAN)
))
))
))
))

1. On April 30, 2019, FTB issued a Demand for Tax Return (Demand) for the 2017 tax year because appellant had not filed a California income tax return and FTB had information indicating that appellant had a filing requirement. The Demand explained that appellant

- would be assessed a tax based on available information, as well as a demand penalty, a late-filing penalty, a filing enforcement cost recovery fee, and applicable interest.
2. On November 1, 2019, FTB issued a Notice of Proposed Assessment (NPA), which estimated appellant's 2017 taxable income and proposed to assess tax of \$944, a late-filing penalty of \$236, a demand penalty of \$1,960, a filing enforcement fee of \$93, and applicable interest. The proposed assessment became final and became collectible after appellant did not protest the NPA.
 3. On January 27, 2020, FTB issued a State Income Tax Balance Due Notice stating that appellant was required to pay the balance due by February 11, 2020.
 4. On February 6, 2020, appellant filed a 2017 California Resident Income Tax Return (Form 540), reporting total tax of \$2,056. After claiming income tax withholdings of \$6,894, appellant claimed an overpayment of \$4,838.
 5. FTB accepted the return as filed, abated the late-filing penalty, reduced the demand penalty to \$514, and issued a refund.¹
 6. On March 2, 2021, FTB received information from the IRS indicating that the IRS had adjusted appellant's 2017 federal return, increased appellant's taxable income, and assessed additional federal taxes and penalties. FTB submits the 2017 FEDSTAR IRS Data Sheet dated July 18, 2023, showing the federal audit adjustments and the resulting taxes and penalties. Appellant did not report these federal adjustments to FTB.
 7. On June 14, 2022, based on the IRS audit information, FTB issued a second NPA proposing to assess additional California tax of \$154,884.00, a late-filing penalty of \$37,511.50, an accuracy-related penalty of \$30,976.80, and applicable interest.
 8. Appellant protested the second NPA. In support of his position at protest, appellant provided FTB with copies of a 2017 amended federal return and a 2017 IRS Wage and Income Transcript dated August 15, 2022.
 9. In a letter dated March 8, 2023, FTB acknowledged appellant's protest and requested for appellant to submit new information to support his position. After appellant did not respond to FTB's March 8, 2023 letter, FTB issued a Notice of Action dated April 28, 2023, which affirmed the NPA.
 10. Appellant subsequently submitted to FTB a 2017 amended California return. FTB did not process it because it reported federal adjusted gross income that did not match the federal adjusted gross income accepted by the IRS.

¹ The refund was intercepted by the IRS due to an outstanding federal tax liability.

11. This timely appeal followed.
12. On appeal, appellant submits copies of the 2017 IRS Wage and Income Transcript dated August 15, 2022, and 2017 amended federal and California returns.
13. On appeal, FTB submits copies of the 2017 federal audit workpapers from the IRS. FTB also submits appellant's 2017 IRS account transcript dated April 8, 2024, and Individual Master File Transcript from the IRS, which is dated July 11, 2023. The Master File Transcript contains a penalty code of "786" for the federal accuracy-related penalty, which indicates that the penalty was imposed due to negligence or disregard of the rules and regulations.

DISCUSSION

Issue 1: Whether appellant has shown error in the proposed assessment, which is based on a federal determination.

R&TC section 18622(a) provides that a taxpayer must either concede the accuracy of a final federal determination or state how it is erroneous. If the IRS makes a change or correction to "any item required to be shown on a federal tax return, including any gross income, deduction, penalty, credit, or tax for any year," the taxpayer must report the federal change to FTB within six months after the date it becomes final (which appellant did not do in this case). (*Ibid.*) A federal determination is deemed final when the adjustment resulting from an IRS examination is assessed. (R&TC, § 18622(d); Internal Revenue Code (IRC), § 6203; see *Appeal of King Solarman*, 2024-OTA-203P.) As relevant here, an IRS account transcript is a valid record of assessment. (See Treas. Reg. § 301.6203-1; Rev. Rul. 2007-21, 2007-14 I.R.B. 865.)

A deficiency assessment based on a federal audit report is presumptively correct, and the 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.*)

In this appeal, FTB assessed additional tax based on the IRS audit adjustments. Appellant has not specifically addressed the IRS audit adjustments, explained exactly where he disagrees with the federal determination, or provided business records, bank statements, or any other evidence of his financial activities, aside from what is shown on the IRS Wage and Income Transcript, which does not include all sources of income, such as rental and business income. Appellant has provided copies of his 2017 amended IRS and California returns, but in this case

these documents cannot satisfy his burden of proof.² In addition, the evidence shows that as of April 8, 2024, the IRS had not received or accepted appellant's amended 2017 federal return.

OTA cannot reverse FTB's proposed tax assessment because appellant has not proven that it is incorrect.

Issue 2: Whether appellant has established reasonable cause to abate the late-filing penalty.

California imposes a penalty for the failure to file a return by its due date, unless the failure to file was due to reasonable cause and not due to willful neglect. (R&TC, § 19131(a).) To establish reasonable cause, a taxpayer must show that the failure to file a timely return occurred despite the exercise of ordinary business care and prudence, or that cause existed that would prompt an ordinarily intelligent and prudent businessperson to have acted in the same manner under similar circumstances. (*Appeal of Head and Feliciano*, 2020-OTA-127P.) The burden of proof is on the taxpayer to show that reasonable cause exists to support an abatement of the late-filing penalty. (*Appeal of Xie*, 2018-OTA-076P.)

Here, appellant filed his 2017 return on February 6, 2020, but it was due on April 15, 2018. The late-filing penalty was therefore properly imposed. Appellant does not argue, and the evidence does not show, that appellant had reasonable cause for filing his tax return after the deadline. Therefore, there is no legal basis for the abatement of the late-filing penalty.

Issue 3: Whether appellant is entitled to abatement of the accuracy-related penalty.

R&TC section 19164 generally incorporates the provisions of IRC section 6662, which provides for an accuracy-related penalty of 20 percent of the applicable underpayment of tax. As relevant here, the accuracy-related penalty applies to the portion of the underpayment attributable to negligence or disregard of rules and regulations. (IRC, § 6662(b)(1).) For purposes of the accuracy-related penalty, 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." (IRC, § 6662(c).) When FTB's proposed assessment is based on a final federal determination that imposed the accuracy-related penalty

² On appeal, appellant states that "I've responded to past letters with back up documentations. Haven't gotten a response... I'm attaching an amended 1040X return along with my 2017 Wage and Income Statement showing all reported income..." It is not clear what "back up documentations" appellant might be referring to, but appellant did not submit them to OTA on appeal.

based on negligence, FTB's imposition of the penalty is presumed correct. (*Appeal of Dillahunty*, 2024-OTA-024P.)

The accuracy-related penalty may be reduced or abated to the extent that a taxpayer shows that: (1) there is a reasonable basis for the taxpayer's reporting position; (2) the position was adequately disclosed in the tax return (or a statement attached to the return) and there is a reasonable basis for treatment of the item; or (3) the taxpayer acted in good faith and had reasonable cause for the understatement. (*Appeal of Dillahunty, supra.*)

Here, the proposed assessment is based on a final federal determination that imposed the accuracy-related penalty based on negligence, as indicated on appellant's 2017 Individual Master File Transcript. Accordingly, FTB's imposition of the penalty based on negligence is presumed correct, and OTA finds that FTB properly imposed the accuracy-related penalty.

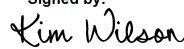
Appellant has not specifically addressed this penalty. Moreover, the evidence does not show that any of the potential reasons for penalty abatement might apply to appellant's circumstances. Accordingly, appellant has failed to establish that the penalty should be abated.

HOLDINGS

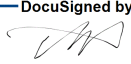
1. Appellant has not shown error in the proposed assessment, which is based on a final federal determination.
2. Appellant has not established reasonable cause to abate the late-filing penalty.
3. Appellant is not entitled to abatement of the accuracy-related penalty.

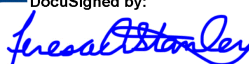
DISPOSITION

FTB's proposed assessment is sustained.

Signed by:

4E8E740EDB984CD...
Kim Wilson
Hearing Officer

We concur:

DocuSigned by:

8A4204817A67463...
Andrew Wong
Administrative Law Judge

DocuSigned by:

0CC6C6ACCC6A44D...
Teresa A. Stanley
Administrative Law Judge

Date Issued: 6/29/2026