

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:	)	OTA Case No. 230914418
M. PALITZ	)	
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OPINION

Representing the Parties:

For Appellant:	Lisa Nelson, Attorney
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For Respondent:	Marguerite Mosnier, Attorney
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A. VASSIGH, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, M. Palitz (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$10,811, an accuracy-related penalty of \$2,162.20, and applicable interest for the 2015 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, section 30209(a).

ISSUES

1. Whether appellant has established error in FTB's proposed assessment of additional tax, which is based on federal adjustments.
2. Whether appellant has established that the accuracy-related penalty should be abated.

FACTUAL FINDINGS

1. Appellant timely filed his California Resident Income Tax Return for 2015 (tax return), using Head of Household filing status, zero taxable income and no tax due. FTB processed and accepted appellant's tax return as filed.
2. Subsequently, FTB received information from the IRS that it had made adjustments to appellant's 2015 tax year account, increasing appellant's federal taxable income. Appellant did not inform FTB of the federal adjustments. To the extent applicable under California law, FTB made corresponding adjustments to appellant's 2015 return.

3. On May 2, 2022, FTB issued a Notice of Proposed Assessment (NPA) which proposed disallowing part of a capital loss; disallowing various Schedule C expense deductions; disallowing certain Schedule A deductions; and allowing a self-employment credit and standard deduction. These adjustments increased appellant's California taxable income by \$175,542. The NPA also proposed disallowing the dependent exemption credits appellant had claimed on his tax return and calculated his revised tax liability using the Single/Married Filing Separately filing status, as the IRS had. Following these adjustments, FTB proposed additional tax of \$10,811 and an accuracy-related penalty of \$2,162.20, plus interest.
4. Appellant protested the NPA, stating that the proposed adjustments were inaccurate because they were rushed due to an Offer in Compromise (OIC) with the IRS that addresses all the issues. FTB responded that the federal tax information available to FTB did not indicate that the IRS had revised its tax assessment, and asked appellant to provide any updated information about his federal account. When appellant did not do so,¹ FTB issued a Notice of Action affirming the NPA on October 28, 2022.
5. This timely appeal followed upon appellant's submission of his opening brief on November 1, 2022.
6. An IRS Account Transcript, dated October 17, 2023, shows that as of that date, appellant still had a significant balance on his 2015 federal tax account. The IRS Account Transcript also shows that, as of that date, there had not been an OIC processed or accepted by the IRS, and that the IRS' assessment of additional tax had not been revised.
7. In its opening brief, FTB states that if appellant provides documentation indicating that the IRS revised or is reviewing his 2015 federal tax account, FTB would review it. After submitting his opening brief, appellant has not submitted any new information during this appeal process.

¹ Appellant responded with a letter in which he stated that the OIC "was for the ending of any liability whatsoever," possibly confusing the operations of IRS and FTB. Appellant did not provide any updated IRS documentation or other information showing that the IRS' assessment had been revised (as opposed to the tax balance having been settled through the OIC process).

DISCUSSION

Issue 1: Whether appellant has established error in FTB's proposed assessment of additional tax, which is based on federal adjustments.

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 federal revisions to appellant's 2015 federal tax account. 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 is his claim that his federal tax return contained incorrect information, and that his federal tax balance has been settled with an OIC. Appellant does not provide any supporting documentation in support of his claims, and the evidentiary record in this appeal does not show any OIC entered into between appellant and the IRS. Further, an OIC with the IRS would not establish that the IRS assessment was incorrect or that FTB's proposed assessment based on the IRS information is incorrect. An OIC with the IRS would establish only that the IRS and appellant reached an agreement for payment of appellant's federal tax liability, not that the IRS determination was in error. Since appellant has not provided any information in support of his position that the FTB's proposed assessment of additional tax is erroneous, he has not met his burden of proof to establish error in FTB's proposed 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) provides, in relevant part, that the penalty applies to the portion of the underpayment attributable to any substantial understatement of income tax. In general, a substantial understatement of tax exists if the understated amount exceeds the greater of 10 percent of the tax required to be shown on the return or \$5,000. (IRC, § 6662(d)(1)(A).) An "understatement" is defined as the excess of the amount of tax required to

be shown on the return for the tax year over the amount of tax shown on the return, reduced by any rebate. (IRC, § 6662(d)(2).)

In this appeal, the imposition of the accuracy-related penalty for the 2015 taxable year was appropriate. Since the amount of tax required to be shown on the return is \$10,811, and appellant reported zero tax on his tax return, the understatement of tax exceeds \$5,000. Appellant does not argue that the penalty was improperly calculated. Appellant does not argue, and the evidence does not show, that any exception to this penalty might potentially apply. Therefore, the accuracy-related penalty cannot be abated.

HOLDINGS

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

DISPOSITION

FTB's action is sustained.

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Amanda Vassigh

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Amanda Vassigh
Administrative Law Judge

We concur:

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Keith T. Long

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Keith T. Long
Administrative Law Judge

Signed by:

Seth Elsom

C04CD432F3254FD...

Seth Elsom
Hearing Officer

Date Issued: 8/29/2025