OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:	OTA Case No. 18011797
ALEJANDRO M. TAVARES	Date Issued: December 24, 2018

OPINION

Representing the Parties:

For Appellant: Alejandro M. Tavares

For Respondent: Mira Patel, Tax Counsel

For Office of Tax Appeals: Matthew D. Miller, Tax Counsel III

T. STANLEY, Administrative Law Judge: Pursuant to California Revenue and Taxation Code section 19045,[1] Alejandro M. Tavares (appellant) appeals an action by the Franchise Tax Board (FTB or respondent) on proposed assessments of additional tax in the amounts of $1,243 and $1,401, plus interest, for the 2013 and 2014 taxable years, respectively.[2]

Appellant waived the right to an oral hearing; therefore, we decide this matter based on the written record.

ISSUES

1. Has appellant shown error in respondent's proposed assessments, which are based on federal determinations?
2. Has appellant shown that interest may be abated?

[1] Unless otherwise indicated, all statutory "section" or "§" references are to sections of the California Revenue and Taxation Code.

[2] The Notice of Action in this appeal was issued jointly to appellant and his spouse, Gloria Tavares (Ms. Tavares). The appeal letter contained only appellant's signature. The Office of Tax Appeals issued a letter requesting the signature of Ms. Tavares, if she desired to be a party to this appeal. (See Cal. Code Regs., tit. 18, § 5420.) No reply was received, and therefore "appellant" in this appeal will refer only to Mr. Tavares.

FACTUAL FINDINGS

1. Appellant and Ms. Tavares filed a timely 2013 California tax return with a "Married/RDP filing jointly" filing status. They reported California adjusted gross income (AGI) of $75,550, total itemized deductions of $35,232, taxable income of $40,318, and tax of $741. After applying exemption credits of $212, they reported total tax of $529. They also reported $1,268 of California income tax withholding, and an overpayment of $739 that appellant claimed as a refund. The FTB accepted and processed the return as filed and refunded $739 to the couple.
2. Appellant and Ms. Tavares filed a timely 2014 California tax return with a "Married/RDP filing jointly" filing status. They reported California AGI of $74,461, total itemized deductions of $43,395, taxable income of $31,066, and tax of $467. After applying exemption credits of $216, they reported total tax of $251. They also reported $1,604 of California income tax withholding, and an overpayment of $1,353 that they claimed as a refund. The FTB accepted and processed the return as filed and refunded $1,353 to the couple.
3. The Internal Revenue Service (IRS) provided information to respondent indicating that the IRS increased the couple's 2013 and 2014 federal taxable income.
4. For the 2013 tax year, the IRS increased the couple's federal taxable income from $31,154 to $56,210. The federal increase was based on the disallowance of itemized deductions for unreimbursed employee business expenses of $23,462 and charitable cash contributions of $2,700.
5. For the 2014 tax year, the IRS increased the couple's federal taxable income from $20,755 to $54,900. The federal increase was based on the disallowance of itemized deductions for unreimbursed employee business expenses of $31,377 and charitable cash contributions of $2,870.
6. Based on the federal adjustments, on October 7, 2016, respondent issued Notices of Proposed Assessment (NPA) for 2013 and 2014 to the couple. The 2013 NPA increased their taxable income by $26,162, and proposed additional tax of $1,243, plus interest. The 2014 NPA increased their taxable income by $34,247, and proposed additional tax of $1,401, plus interest.

7. Appellant timely protested the NPAs, asserting that he made an honest mistake and was never told he could not take the deduction. He also stated that he used his personal vehicle for his job, and his employer paid him $250 per month and a gas allowance for the use of his vehicle.
8. Respondent issued a letter in reply and reaffirmed its position in the NPAs with a Notice of Action. This timely appeal followed.
9. The Office of Tax Appeals (OTA) requested additional briefing in this matter. Specifically, the OTA requested that appellant provide information regarding his employer's reimbursement policy and substantiation of his unreimbursed employee business expenses and charitable contributions. Appellant did not respond.

DISCUSSION

Issue 1 – Has appellant shown error in respondent's proposed assessments, which are based on federal determinations?

Section 18622(a) provides that taxpayers shall either concede the accuracy of a federal determination or state wherein it is erroneous. 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. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509; *Appeal of Brockett,* 86-SBE-109, June 18, 1986.)[3] Income tax deductions are a matter of legislative grace, and a taxpayer who claims a deduction has the burden of proving by competent evidence that he or she is entitled to that deduction. (*New Colonial Ice Co. v. Helvering* (1934) 292 U.S. 435, 440.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof with respect to an assessment based on a federal action. (*Appeal of Magidow,* 82-SBE-274, Nov. 17, 1982.) It is well established that the failure of a party to introduce evidence that is within his or her control gives rise to the presumption that such evidence, if provided, would be unfavorable. (*Appeal of Cookston,* 83-SBE-048, Jan. 3, 1983.)

Here, respondent proposed assessments of additional tax based on federal adjustments for the 2013 and 2014 tax years. Specifically, the IRS disallowed appellant's claimed itemized deductions for unreimbursed employee business expenses and charitable cash contributions on

[3] State Board of Equalization (BOE) opinions may be cited as precedential authority to the Office of Tax Appeals unless a panel removes, in whole or in part, the precedential status of the opinion. Precedential BOE opinions are viewable on the board's website: <http://www.boe.ca.gov/legal/legalopcont.htm>.

appellant's 2013 and 2014 federal income tax returns. The employee business expenses claimed by appellant relate to automobile and travel expenses incurred during his employment.[4] The charitable contributions claimed by appellant relate to gifts allegedly made to charity by cash or check.[5]

Appellant was given an opportunity to provide evidence showing error in respondent's determinations; however, appellant has not presented any argument or evidence establishing error in the final federal assessments or in respondent's determinations that are based thereon. Instead, he concedes he made a mistake. Therefore, we conclude that appellant has not satisfied his burden of showing error in the final federal assessments. He has not overcome the presumption of correctness in respondent's determinations.

Issue 2 – Has appellant shown that interest may be abated?

Interest is required to be assessed from the date when payment of tax is due through the date that it is paid. (§ 19101.) Imposition of interest is mandatory; it is not a penalty, but it is compensation for appellant's use of money after it should have been paid to the state. (*Appeal of Yamachi*, 77-SBE-095, June 28, 1977.) There is no reasonable cause exception to the imposition of interest. (*Appeal of Goodwin*, 97-SBE-003, Mar. 19, 1997.)

To obtain relief from the imposition of interest, a taxpayer must qualify under the waiver provisions of sections 21012, 19112, or 19104. The relief of interest under section 21012 is not relevant here, as the FTB did not provide appellant with any written advice. Section 19112 requires a taxpayer to make a showing of extreme financial hardship caused by a significant disability or other catastrophic circumstance. However, appellant makes no such showing. Under section 19104, the FTB is authorized to abate or refund interest if there has been an unreasonable error or delay in the performance of a ministerial or managerial act by an employee of the FTB. Here, appellant has not alleged, and the record does not reflect, any such errors or delays. Thus, appellant has not established any of the statutory grounds for interest abatement.

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[4] In 2013 appellant claimed $22,162 in vehicle expenses, $500 in parking fees, tolls, and transportation, and $800 in travel expenses on Form 2106, "Employee Business Expenses." In 2014 appellant claimed $31,377 in vehicle expenses on Form 2106.

[5] In 2013 appellant claimed $2,700 as charitable contributions made by cash or check on Schedule A, "Itemized Deductions." In 2014 appellant claimed $2,870 as charitable contributions made by cash or check on Schedule A, "Itemized Deductions."

HOLDINGS

1. Appellant has not shown error in respondent's proposed assessments, which are based on federal determinations.
2. Appellant has not shown that interest may be abated.

DISPOSITION

Respondent's actions are sustained in full.

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Teresa A. Stanley
Administrative Law Judge

We concur:

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Daniel K. Cho
Administrative Law Judge

DocuSigned by:
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Andrew J. Kwee
Administrative Law Judge