

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

In the Matter of the Appeal of:  
**THICK G. CHOW**

) OTA Case No. 18063349  
)  
) Date Issued: August 14, 2019  
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)

**OPINION**

Representing the Parties:

For Appellant: John Fong Dea, EA

For Respondent: Gi Nam, Tax Counsel

J. LAMBERT, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, Thick G. Chow (appellant) appeals an action by respondent Franchise Tax Board (FTB) in proposing to assess: (1) additional tax of \$23,493 and an accuracy-related penalty of \$4,698.60, plus interest, for the 2013 tax year; and (2) additional tax of \$9,860 and an accuracy-related penalty of \$1,972, plus interest, for the 2014 tax year.<sup>1</sup>

Appellant waived his right to an oral hearing and therefore the matter is being decided based on the written record.

**ISSUES**

1. Whether appellant has shown error in FTB’s proposed assessments of tax, which are based on a final federal determination.
2. Whether appellant has shown that interest should be abated.

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<sup>1</sup>FTB’s Notices of Action (NOA) do not reflect a payment of \$30,723.34 made on January 31, 2018, for the 2013 taxable year, and a payment of \$12,544.70 made on January 31, 2018, for the 2014 tax year.

Appellant does not dispute the accuracy-related penalties. Therefore, the penalties are not at issue and will not be discussed further.

## FACTUAL FINDINGS

### 2013 Tax Year

1. Appellant timely filed his 2013 California Resident Tax Return. Appellant reported federal adjusted gross income (AGI) of \$97,181, California AGI of \$89,972, itemized deductions of \$100,223, taxable income of zero, exemption credit of \$212, total tax consisting the alternative minimum tax of \$4,944, and total amount due of \$4,944. Appellant paid the \$4,944 amount due with the return.
2. On March 7, 2016, FTB received a FEDSTAR Internal Revenue Service (IRS) Data Sheet (FEDSTAR) for the 2013 taxable year showing federal adjustments and the imposition of a federal accuracy-related penalty.
3. Based on the federal adjustments, FTB issued a Notice of Proposed Assessment (NPA) on January 18, 2018, which increased appellant's taxable income by \$332,636. This adjustment increased appellant's taxable income from -\$10,251 to \$322,385. The NPA proposed additional tax of \$23,493 and an accuracy-related penalty of \$4,698.60, plus interest.
4. Appellant paid the balance due on January 31, 2018, and filed a protest with FTB.
5. FTB affirmed its NPA by a Notice of Action (NOA) dated May 17, 2018. This timely appeal followed.

### 2014 Tax Year

6. Appellant timely filed his 2014 California income tax return. Appellant reported federal AGI of \$584,376, California AGI of \$679,407, itemized deductions of \$45,107, taxable income of \$634,300, total tax of \$64,614, estimated tax and other payments of \$4,944, and total amount due of \$59,670. Appellant paid the amount due with the return.
7. Subsequently, FTB received a FEDSTAR for the 2014 taxable year showing that the IRS made adjustments to appellant's federal return and imposed a federal accuracy-related penalty.
8. Based on the federal adjustments, FTB issued a NPA on January 18, 2018, which increased appellant's taxable income by \$80,157. This adjustment increased appellant's taxable income from \$634,300 to \$714,457. The NPA proposed additional tax of \$9,860 and an accuracy-related penalty of \$1,972, plus interest.

9. Appellant paid the balance due on January 31, 2018, and filed a protest of the NPA.
10. On May 17, 2018, an NOA was issued that affirmed the NPA. This timely appeal followed.

### DISCUSSION

#### ISSUE 1: Whether appellant has shown error in FTB's proposed assessments of tax, which are based on a final federal determination.

R&TC section 18622 provides that a taxpayer shall either concede the accuracy of a federal determination or state wherein it is erroneous. It is well settled that a deficiency determination based on a federal audit is presumptively correct and that a taxpayer bears the burden of proving that the determination is erroneous. (*Appeal of Brockett* (86-SBE-109) 1986 WL 22731; *Todd v. McColgan* (1949) 89 Cal.App.2d 509.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof with respect to a determination based on a final federal action. (*Appeal of Magidow* (82-SBE-274) 1982 WL 11930.) In the absence of credible, competent, and relevant evidence showing that the FTB's determination is incorrect, it must be upheld. (*Appeal of Seltzer* (80-SBE-154) 1980 WL 5068.)

Although appellant contended at protest that certain deductions were improperly disallowed, on appeal appellant does not challenge any particular disallowance and does not provide any supporting documentation. Appellant requests a settlement or compromise of the liabilities. However, the Office of Tax Appeals cannot enter into compromises or settlements, since the only power that it has is to determine the correct amount of a taxpayer's California tax liability for the appeal year. (*Appeal of Dauberger et al.* (82-SBE-082) 1982 WL 11759.) Appellant has not provided any evidence showing error in the final federal assessments or FTB's proposed assessments based on the final federal assessments. As such, appellant has not satisfied his burden of showing error in FTB's proposed assessments.

#### ISSUE 2: Whether appellant has shown that interest should be abated.


Appellant states that the NOAs computed the proposed amounts, including interest, from February 2, 2018, to May 17, 2018. Appellant states that he already paid the amount in full on January 31, 2018, and so any interest that accrued after that date should be abated. However, no interest accrued after that date because appellant paid the amounts due. Therefore, the amount of interest that appellant requests in his appeal letter is not an issue in this appeal.

HOLDINGS


1. Appellant has not shown error in FTB’s proposed assessments of tax and penalties, which are based on a final federal determination.
2. Appellant has not shown that interest should be abated.


DISPOSITION

FTB’s action is sustained.

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 Josh Lambert  
 Administrative Law Judge

We concur:

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 Jeffrey I. Margolis  
 Administrative Law Judge

DocuSigned by:  
  
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 Kenneth Gast  
 Administrative Law Judge