OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:	) OTA Case No. 19034576
DAVID TRAN AND LINDA NGUYEN	)
	)
	)
	)

OPINION

Representing the Parties:

For Appellants: David Tran and Linda Nguyen

For Respondent: David Kowalczyk, Tax Counsel

For Office of Tax Appeals: William J. Stafford, Tax Counsel III

D.BRAMHALL, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, David Tran and Linda Nguyen (appellants) appeal an action by respondent Franchise Tax Board (FTB) in proposing to assess additional tax of $2,802, plus applicable interest, for the 2015 tax year.

Appellants waived their right to an oral hearing and therefore this appeal is being decided on the written record.

ISSUES

1. Whether appellants have demonstrated error in FTB's proposed assessment of additional tax, which was based upon federal adjustments.
2. Whether appellants have shown that interest should be abated.

FACTUAL FINDINGS

1. Appellants filed a timely joint 2015 California income tax return on March 1, 2016, reporting federal adjusted gross income of $136,220, California taxable income of $70,375, and tax of $1,930.

2. After reporting withholdings of $6,361, appellants reported a refund due of $4,431, which FTB allowed and credited to appellants' outstanding liabilities for tax years 2011 and 2013 on March 16, 2016.
3. Subsequently, FTB received information via a FEDSTAR IRS Data Sheet, showing that the Internal Revenue Service (IRS) increased appellants' 2015 federal taxable income by $195,262.
4. On August 23, 2018, FTB issued a Notice of Proposed Assessment (NPA) that increased appellants' California taxable income by $195,262 to account for the following amounts, which were based on the federal adjustments: other income of $158,146; disallowed charitable contributions of $17,126; and disallowed miscellaneous deductions of $19,990.
5. In response, appellants filed a timely protest, asserting that the IRS removed the "other income" of $158,146 from its federal assessment.
6. Afterwards, FTB issued a Notice of Action (NOA), which revised the NPA by removing the other income of $158,146 from the proposed assessment. The NOA did not adjust or reduce the adjustments made to disallowed charitable contributions of $17,126 and disallowed miscellaneous deductions of $19,990. The NOA proposed an additional tax of $2,802, plus applicable interest.
7. In response, appellant filed this timely appeal.

DISCUSSION

Issue 1: Whether appellants have demonstrated error in FTB's proposed assessment of additional tax, which was based upon federal adjustments.

A taxpayer must report federal changes to income or deductions to FTB within six months of the date the federal changes become final. (R&TC, § 18622(a).) The taxpayer must concede the accuracy of the federal changes or prove that those changes, and any California deficiency assessment based thereon, are erroneous. (R&TC, § 18622(a).) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Magidow* (82-SBE-274) 1982 WL 11930.)

Appellants assert that the proposed assessment of additional tax set forth in the NOA is incorrect and/or that they have paid their 2015 California tax liability with tax refunds from different tax years. In turn, FTB argues that appellants have not provided any documentation

establishing error in the proposed assessment of additional tax set forth in the NOA or that appellants have paid their 2015 California tax liability with tax refunds from different tax years.

Here, FTB's use of information from the IRS is both reasonable and rational (see *Appeal of Brockett* (86-SBE-109) 1986 WL 22731; *Appeal of Magidow, supra*), and appellants have not provided any evidence demonstrating error in the IRS' adjustments or FTB's NOA based thereon. Additionally, we note a recent copy of appellants' federal transcript dated April 24, 2019, shows that the IRS has not adjusted or reduced the federal adjustments adopted in the NOA issued by FTB. Additionally, account documentation provided by FTB demonstrates that various offsetting debits and credits to appellant's 2015 tax year account yield a balance due of $2,801, plus interest, should the NOA at issue be sustained. Therefore, no offsetting refunds are due to appellants. Accordingly, we find that appellants have not shown error in FTB's proposed assessment for tax year 2015.

Issue 2: Whether appellants have shown that interest should be abated.

Imposition of interest is mandatory; it is not a penalty but is compensation for appellants' use of money after it should have been paid to the state. (*Appeal of Yamachi* (77-SBE-095) 1977 WL 3905.) There is no reasonable cause exception to the imposition of interest. (*Appeal of Jaegle* (76-SBE-070) 1976 WL 4086.)

To obtain relief from interest, appellants must qualify under one of three statutes: R&TC sections 19104, 19112 or 21012. R&TC section 21012 is not applicable, because there has been no reliance on any written advice requested of FTB. R&TC section 19112 requires a showing of extreme financial hardship caused by significant disability or other catastrophic circumstance. However, there is no provision in R&TC section 19112 or other law that gives the Office of Tax Appeals (OTA) jurisdiction to determine whether R&TC section 19112 applies in this instance. However, the Legislature did provide OTA with jurisdiction over appeals of denied interest abatement requests under R&TC section 19104, as discussed below.

Under R&TC section 19104, the OTA may only abate or refund interest on appeal:

> [T]o the extent that interest is attributable in whole or in part to any unreasonable error or delay by an officer or employee of the Franchise Tax Board (acting in his or her official capacity) in performing a ministerial or managerial act.

(R&TC, § 19104(a)(1).) Further, the error or delay can be taken into account only if no significant aspect is attributable to the taxpayer, and the error or delay occurred after FTB contacted the taxpayer in writing about the underlying deficiency. (R&TC, § 19104(b)(1).) Here, appellants have not alleged (or demonstrated) that FTB caused the accrual of interest because of a delay in the performance of a ministerial or managerial act as required by R&TC section 19104. Thus, we find no basis for abatement of interest.

HOLDINGS

1. Appellants have not demonstrated error in FTB's proposed assessment of additional tax, which was based upon federal adjustments.
2. Appellants have not shown that interest should be abated.

DISPOSITION

FTB's action is sustained.

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Douglas Bramhall
Administrative Law Judge

We concur:

DocuSigned by:
FD75A3136CB34C2...
Kenneth Gast
Administrative Law Judge

DocuSigned by:
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Linda C. Cheng
Administrative Law Judge

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