

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
J. NAPHADE

) OTA Case No. 20076370
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OPINION

Representing the Parties:

For Appellant:

J. Naphade

For Respondent:

Savanna Corr, Graduate Student Assistant
Sarah J. Fassett, Tax Counsel

N. DANG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, J. Naphade (appellant) appeals an action by respondent Franchise Tax Board (FTB) affirming its proposed assessment of \$529 in additional tax, plus applicable interest, for the 2011 tax year.

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

ISSUES

1. Whether FTB’s proposed assessment was timely.
2. Whether waiver of the tax and interest is warranted.

FACTUAL FINDINGS

1. Appellant contributed \$5,000 to an investment retirement account (IRA).
2. Appellant deducted this IRA contribution on his 2011 state and federal income tax returns.
3. The Internal Revenue Service (IRS) disallowed appellant’s IRA contribution deduction because his modified adjusted gross income exceeded the statutory limits for claiming this deduction.

4. Appellant did not report this federal adjustment to FTB.
5. On February 5, 2018, the IRS notified FTB of the change it had made to appellant's federal income tax return.
6. On April 2, 2019, FTB followed the federal determination and issued a Notice of Proposed Assessment (NPA) to appellant, disallowing his IRA contribution deduction.

DISCUSSION

Issue 1: Whether FTB's proposed assessment was timely.

Appellant disputes the timeliness of FTB's proposed assessment, noting that it was issued nearly seven years after the filing of his California tax return.

While FTB generally has four years from the date a return is filed to issue a proposed assessment (R&TC, § 19057(a)), this limitation period may be extended where, as here, a federal adjustment is involved. Taxpayers are required to report federal changes or corrections to FTB within six months of the date they become final. (R&TC, § 18622(a).) If the taxpayer (or the IRS) timely reports such an adjustment, FTB must issue its proposed assessment within two years from the date of notice (or within the general four-year limitation period, whichever expires later). (R&TC, § 19059(a).) If the taxpayer or the IRS notifies FTB of the federal adjustment after the requisite six-month notice period, the limitation period is increased to four years from the date of notice. (R&TC, § 19060(b).) Finally, where FTB does not receive notice from either the taxpayer or the IRS, FTB may issue its proposed assessment at any time. (R&TC, § 19060(a).)

Here, appellant's failure to timely report the disallowed IRA contribution deduction to FTB means that the applicable limitation period did not begin to run until February 5, 2018, when the IRS informed FTB of the federal adjustment. (R&TC, § 19060(b).) Upon receiving notice of the federal adjustment, FTB had four years from that date to issue a proposed assessment based on the resulting federal change. (*Ibid.*) FTB issued its NPA on April 2, 2019, just over a year later, and thus the NPA was timely.

Issue 2: Whether waiver of the tax and interest is warranted.

Appellant requests that we waive the tax and interest because both he and his spouse are unemployed and presently without any income. Appellant further asserts that the ongoing coronavirus pandemic has only compounded their difficulty in securing employment.

We sympathize with appellant’s situation. However, we lack the authority to waive or reduce the tax owed due to financial hardship or inability to pay.¹ (*Appeal of Luebbert* (71-SBE-028) 1971 WL 2708.)

Concerning interest, the law provides that *FTB* may waive it based upon extreme financial hardship caused by significant disability or other catastrophic circumstance. (R&TC, § 19112.) While appellant’s position appears to implicate this interest relief provision, he has not expressly raised it nor has he provided any evidence to support its application here. Moreover, we simply lack jurisdiction to consider interest relief on this basis. (*Appeal of Moy*, 2019-OTA-057P.)

For the foregoing reasons, we must conclude that waiver of the tax and interest is not warranted.

HOLDINGS

1. FTB’s proposed assessment was timely.
2. Waiver of the tax and interest is not warranted.

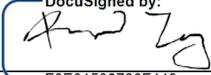
DISPOSITION

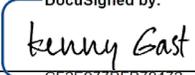
FTB’s action is sustained.

DocuSigned by:

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 Nguyen Dang
 Administrative Law Judge

We concur:

DocuSigned by:

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 Richard Tay
 Administrative Law Judge

DocuSigned by:

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 Kenneth Gast
 Administrative Law Judge

Date Issued: 2/1/2021

¹ For final liabilities, FTB may consider a taxpayer’s inability to pay under its Offer in Compromise Program.