OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **B. LETTERMAN AND** **T. NGO**	OTA Case No. 19064922

OPINION

Representing the Parties:

For Appellants: B. Letterman

For Respondent: Freddie C. Cauton, Legal Analyst

R. TAY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, B. Letterman and T. Ngo (appellants) appeal an action by the Franchise Tax Board (respondent) proposing $864 of additional tax, and applicable interest, for the 2014 tax year.

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

ISSUES

1. Whether appellants have shown respondent erred in its proposed assessment of additional tax for the 2014 tax year.
2. Whether appellants are entitled to interest abatement.

FACTUAL FINDINGS

1. Appellants filed a timely 2014 California income tax return. On their California income tax return, appellants reported a California subtraction in the amount of $10,800 for paid family leave (PFL) insurance benefits, which reduced appellants' wages for California tax purposes.
2. Based on appellants' 2014 income tax return as filed, respondent issued a refund on April 13, 2015.

3. Subsequently, respondent received information from the Internal Revenue Service (IRS) regarding appellants' 2014 income tax reporting. The IRS identified a discrepancy between the amount appellants deducted on their income tax return as PFL and the amount of PFL on appellants' IRS Forms 1099-G.
4. Respondent opened an examination of appellants' 2014 California income tax return based on the IRS information and made a proposed assessment of additional tax and interest.
5. Appellants protested the proposed assessment, and respondent denied the protest. Appellants filed a timely appeal.

DISCUSSION

Issue 1: Whether appellants have shown respondent erred in its proposed assessment of additional tax for the 2014 tax year.

PFL is a family temporary disability insurance program that provides wage replacement benefits for individuals to care for an ill family member or bond with a new child. (Unemp. Ins. Code, § 3301(a)(1), (d).) PFL payments are excluded from gross income for California tax purposes. (R&TC, § 17083.) To exclude payments as PFL payments, taxpayers must show that they received payments issued pursuant to a qualified PFL plan. (See *Appeal of Jindal*, 2019-OTA-372P.)

Here, respondent denied appellants' exclusion of reported PFL payments because it found no evidence appellants received any such payments. Appellants' federal Wage and Income Transcript has no record of appellants' reported PFL payments. Additionally, the EDD had no record of PFL payments issued to appellants in 2014.

Respondent's determinations are presumptively correct, and the taxpayer bears the burden of showing error in those determinations. (*Appeal of Jindal*, *supra*.) This presumption is a rebuttable one and will support a finding only in the absence of sufficient evidence to the contrary. (*Appeal of Williams*, *et al.* (82-SBE-018) 1982 WL 11695.) Respondent's determinations cannot, however, be successfully rebutted when the taxpayer fails to present credible, competent, and relevant evidence as to the issues in dispute. (*Ibid*.) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof. (*Appeal of Vardell,* 2020-OTA-190P.)

In support of their position, appellants provided a copy of their federal and California 2014 income tax returns asserting that everything was filed correctly. However, appellants' insistence that they reported their PFL payments correctly remains unsubstantiated. Appellants have not provided any other documents, which appellants presumably have if they received such payments, showing they received $10,800 of PFL payments in 2014 that are excludible from their California gross income. In the absence of such evidence, appellants have not met their burden of proof. Indeed, "a taxpayer's failure to produce evidence that is within his control gives rise to a presumption that such evidence is unfavorable to his case." (*Appeal of Bindley*, 2019-OTA-179P.)

Issue 2: Whether appellants are entitled to interest abatement.

Interest is required to be assessed from the date when payment of tax is due through the date that it is paid. (R&TC, § 19101.) Imposition of interest is mandatory; it is not a penalty, but is compensation for a taxpayer's use of money after it should have been paid to the state. (*Appeal of GEF Operating, Inc.,* 2020-OTA-057P.) Here, appellants do not raise any specific arguments as to their qualification for the abatement of interest under the applicable interest abatement sections, and we also find no grounds in the record to grant interest abatement.

HOLDINGS

1. Appellants have not shown respondent erred in its proposed assessment of additional tax for the 2014 tax year.
2. Appellants are not entitled to interest abatement.

DISPOSITION

Respondent's assessment is sustained in full.

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Richard Tay
Administrative Law Judge

We concur:

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Administrative Law Judge

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John O. Johnson
Administrative Law Judge

Date Issued: 6/9/2021