

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:

J. GIBSON) OTA Case No. 20106777
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)**OPINION**

Representing the Parties:

For Appellant:

J. Gibson

For Respondent:

Sarah J. Fassett, Tax Counsel

E. S. EWING, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, J. Gibson (appellant)¹ appeals an action by the Franchise Tax Board (respondent) proposing additional tax of \$780, plus applicable interest, for the 2015 taxable year.

Appellant waived the right to an oral hearing; therefore, the matter is decided based on the written record.

ISSUES

1. Whether appellant has shown error in respondent's proposed assessment of additional tax, which is based on a federal determination.
2. Whether appellant is entitled to interest abatement.

FACTUAL FINDINGS

1. Appellant filed a timely California joint income tax return for the 2015 taxable year.
2. Respondent received information that the IRS audited and made adjustments to appellant's federal tax return for the 2015 taxable year. The IRS audit found that appellant did not report wages reflected on W-2s from two different employers, which

¹ This appeal was filed in appellant's name only, even though appellant filed a joint California tax return with appellant's former spouse for the taxable year at issue. Therefore, unless indicated otherwise, we refer only to appellant for purposes of this appeal.

resulted in an increase to appellant's federal adjusted gross income of \$24,015.

Appellant did not notify respondent of the federal adjustments.

3. Based on the information received from the IRS, respondent issued to appellant a Notice of Proposed Assessment (NPA).² The NPA proposed a \$24,015 increase to appellant's California taxable income, \$780 of additional tax, and applicable interest.
4. Appellant's spouse filed a protest of the NPA, requesting respondent grant innocent spouse relief. Respondent sent letters requesting additional information regarding the request. Respondent did not receive any response to the letters and issued a Notice of Action (NOA) affirming the NPA.
5. Appellant made no payments to respondent for the proposed additional tax and interest for the 2015 taxable year.³
6. Appellant filed this timely appeal.

DISCUSSION

Issue 1: Whether appellant has shown error in respondent's proposed assessment of additional tax, which is based on a federal determination.

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. (*Appeal of Gorin*, 2020-OTA-018P.) A taxpayer shall either concede the accuracy of a federal determination or state wherein it is erroneous. (R&TC, § 18622(a).) The applicable burden of proof is by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(c).) A preponderance of the evidence means that the taxpayer must establish by documentation or other evidence that the circumstances he or she asserts are more likely than not to be correct. (*Concrete Pipe and Products of California, Inc. v. Construction Laborers Pension Trust for Southern California* (1993) 508 U.S. 602, 622.) In the absence of credible, competent, and relevant evidence showing that respondent's determinations are incorrect, such determinations must be upheld. (*Appeal of Bindley*, 2019-OTA-179P.)

² The NPA was issued to both appellant and appellant's former spouse because they had jointly filed the 2015 taxable year return.

³ Respondent provided us with appellant's 2015 Tax Year Detail Report (report). The report shows the only payment on appellant's 2015 tax account with respondent was withholding of \$321, which was reported as an overpayment on appellant's originally-filed tax return and was applied as an agency offset (meaning it was paid to another state agency to pay a liability appellant owed to that other agency). Thus, as of the date of production of the report, there were no payments credited to appellant's 2015 tax account with respondent.

In this case, appellant makes no argument that respondent's proposed assessment of additional tax based upon the federal determination is incorrect. Instead, appellant asserts that he paid the IRS assessment in full and does not understand why he was later assessed state tax and interest by respondent. Appellant appears to be confusing respondent with the IRS.⁴ Further, the record shows that appellant made no payments to respondent for the additional tax and interest for the 2015 tax year. Thus, to the extent that appellant contends that the state tax liability has been paid, the facts do not support this contention.

Appellant also expresses concern about his ability to pay the liability due to financial circumstances as a result of COVID-19. Respondent has statutory authority to settle disputed liabilities with taxpayers, and to compromise certain final liabilities. (R&TC, §§ 19442, 19443.) OTA, on the other hand, has no statutory authority to settle a disputed tax liability or to compromise a tax liability. Our function is to determine the correct amount of the taxpayer's California income tax liability. (*Appeals of Dauberger, et al.* (82-SBE-082) 1982 WL 11761.) While we are cognizant that a taxpayer's financial situation may ultimately render a liability uncollectible, the question of ability to pay versus that of determining the correct amount of the tax liability are two separate and distinct concepts. We lack authority to make discretionary adjustments to the amount of a tax assessment based on a taxpayer's ability to pay. (*Appeal of Robinson*, 2018-OTA-059P.)

Issue 2: Whether appellant is entitled to interest abatement.

Interest must be assessed from the date a tax payment is due through the date that it is paid. (R&TC, § 19101.) Imposition of interest is mandatory; it is not a penalty, but it is compensation for a taxpayer's use of money after it should have been paid to the state. (*Appeal of Moy*, 2019-OTA-057P.) There is no reasonable cause exception to the imposition of interest. (*Ibid.*) To obtain relief from interest, a taxpayer must qualify under the waiver provisions of R&TC sections 19104, 19112, or 21012. (*Ibid.*) The relief of interest under R&TC section 21012 is not relevant here, because respondent did not provide appellants with any written advice. Under R&TC section 19104, respondent is authorized to abate or refund interest if there has been an unreasonable error or delay in the performance of a ministerial or managerial

⁴ The IRS and respondent are separate agencies. The IRS administers the federal income tax and respondent administers (among other things) the California state income tax.

act by an employee of respondent. Here, appellant has not alleged, and the record does not reflect, any such errors or delays.

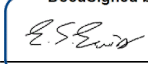
Respondent may grant a waiver of interest when it “determines that an individual or fiduciary demonstrates inability to pay that interest solely because of extreme financial hardship caused by significant disability or other catastrophic circumstance.” (R&TC, § 19112.) As previously mentioned, appellant expresses concern about his ability to pay the liability, including interest, due to financial circumstances as a result of COVID-19. Appellant indicates that his working hours had been cut due to COVID-19, and therefore he cannot pay the interest. However, only respondent may determine when a waiver of interest is warranted upon a showing of extreme financial hardship, and we have no authority to review such a determination. (*Appeal of Moy, supra.*)

HOLDINGS

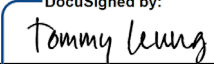
1. Appellant has not shown error in respondent’s proposed assessment of additional tax, which is based on a federal determination.
2. Appellant is not entitled to interest abatement.

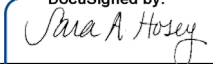
DISPOSITION

Respondent’s action is sustained.

DocuSigned by:

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Elliott Scott Ewing
Administrative Law Judge

We concur:

DocuSigned by:

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Tommy Leung
Administrative Law Judge

DocuSigned by:

8D3FE4A9CA514E7...
Sara A. Hosey
Administrative Law Judge

Date Issued: 9/22/2021