

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:

I. CARRILLO AND
E. CARRILLO

) OTA Case No. 21027270
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OPINION

Representing the Parties:

For Appellants:

I. Carrillo and E. Carrillo

For Respondent:

Rachel Abston, Senior Legal Analyst

D. CHO, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, I. Carrillo and E. Carrillo (appellants) appeal an action by the Franchise Tax Board (respondent) proposing additional tax of \$556, and applicable interest,¹ for the 2016 tax year. Appellants waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

ISSUES

1. Whether appellants have established error in respondent’s proposed assessment for the 2016 tax year, which is based on a final federal determination.
2. Whether appellants have established a basis for abatement of interest.

FACTUAL FINDINGS

1. Appellants filed a timely joint 2016 California Resident Income Tax Return.
2. Subsequently, respondent received federal information that showed that the IRS adjusted appellants’ joint 2016 federal income tax return. Specifically, the IRS increased appellants’ adjusted gross income by \$13,750 for unreported nonemployee compensation

¹ Respondent suspended the accrual of interest for the period January 24, 2020, through August 3, 2020, pursuant to R&TC section 19116.

- and allowed a self-employment tax deduction of \$972. This resulted in an overall increase of \$12,778 (\$13,750 - \$972) to appellants' adjusted gross income.
3. Based on the federal information, respondent made conforming adjustments to appellants' joint 2016 California Resident Income Tax Return, which resulted in an additional tax liability of \$556. Respondent informed appellants of the adjustments and proposed additional tax by Notice of Proposed Assessment (NPA) dated July 20, 2020.
 4. Appellants timely protested the NPA.
 5. Respondent affirmed the NPA by Notice of Action dated January 14, 2021.
 6. This timely appeal followed.

DISCUSSION

Issue 1: Whether appellants have established error in respondent's proposed assessment for the 2016 tax year, which is based on a final federal determination.

R&TC section 18622(a) provides that a taxpayer shall either concede the accuracy of a final federal determination or state wherein it is erroneous. It is well settled that a deficiency assessment based on a federal determination is presumptively correct and that a taxpayer bears the burden of proving that the determination is erroneous. (*Appeal of Gorin*, 2020-OTA-018P.) The applicable burden of proof is by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(c).) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof with respect to an assessment based on a federal action. (*Appeal of Gorin*, *supra*.)

Here, respondent obtained information from the IRS that appellants' joint 2016 federal income return had been adjusted. Respondent made conforming adjustments to appellants' joint 2016 California Resident Income Tax Return, which resulted in the proposed assessment. Therefore, respondent's deficiency assessment is presumed correct, and it is appellants' burden of proof to show that the deficiency assessment is erroneous.

On appeal, appellants argue that they already paid the liability through an overpayment for a subsequent tax year. In support of this argument, appellants provided a document from the IRS indicating that appellants had made an overpayment for the 2018 tax year, which was used to pay off their 2016 federal tax liability. Although appellants may have paid their 2016 federal tax liability, appellants' California tax liability is a separate and independent liability that is apart from their federal liability.

With respect to appellants' California tax liability, appellants have not established that they made any payments toward this liability. Furthermore, the evidence in the record does not indicate that the IRS canceled or modified the final federal determination. In addition, appellants have not demonstrated that respondent's proposed assessment is erroneous. Therefore, appellants have not met their burden of proof.

Issue 2: Whether appellants have established a basis for abatement of interest.

Imposing interest on a tax deficiency is mandatory. (R&TC, § 19101(a).) Interest is not a penalty but is compensation for the taxpayers' use of money after it should have been paid to the state, and it can only be abated in certain limited situations when authorized by law. (*Appeal of Moy*, 2019-OTA-057P.) There is no reasonable cause exception to the imposition of interest. (*Ibid.*)

To obtain interest abatement or waiver, appellants must qualify under any of the following statutes: R&TC sections 19104, 21012, and 19112. First, R&TC section 19104 is inapplicable because appellants do not allege, and the evidence does not show, that the interest at issue is attributable, in whole or in part, to any unreasonable error or delay by an officer or employee of respondent when performing a ministerial or managerial act. Second, R&TC section 21012 does not apply as respondent did not provide appellants with any requested written advice. Lastly, even if appellants had sought a waiver of interest under R&TC section 19112 and was denied by respondent, the Office of Tax Appeals does not have jurisdiction to review respondent's denial of a waiver of interest under R&TC section 19112, which requires a showing of extreme financial hardship. (See *Appeal of Moy, supra.*)

Appellants also argue that they paid the liability and should not owe any interest. However, as stated above in Issue 1, appellants paid off their federal tax liability and not their California tax liability. Therefore, appellants failed to demonstrate that they are entitled to interest abatement or waiver.

HOLDINGS

1. Appellants have not established error in respondent's proposed assessment for the 2016 tax year, which is based on a final federal determination.
2. Appellants have not established a basis for abatement of interest.

DISPOSITION

Respondent's action is sustained.

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Daniel Cho

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Daniel K. Cho

Administrative Law Judge

We concur:

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Alberto T. Rosas

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Alberto T. Rosas

Administrative Law Judge

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Amanda Vassigh

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Amanda Vassigh

Administrative Law Judge

Date Issued: 9/10/2021