

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 21027301
A. OGAMBA AND)
C. OGAMBA)
_____)

OPINION

Representing the Parties:

For Appellants: A. Ogamba
C. Ogamba

For Respondent: Eric R. Brown, Tax Counsel III

S. RIDENOUR, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, A. Ogamba and C. Ogamba (appellants) appeal actions by respondent Franchise Tax Board (FTB) proposing additional tax of \$5,042.00 and an accuracy-related penalty of \$1,008.40 for the 2009 tax year, and additional tax of \$4,416.00 for the 2010 tax year, plus applicable interest.

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

ISSUES

1. Whether appellants established error in FTB’s proposed assessments of additional tax, which were based on final federal determinations, for the 2009 and 2010 tax years.
2. Whether appellants have established a legal basis to abate interest.

FACTUAL FINDINGS

1. For the 2009 tax year, appellants filed joint federal and California income tax returns, reporting the same federal adjusted gross income (AGI) on both tax returns, and claiming two dependent exemptions. For the 2010 tax year, appellants filed joint federal and

- California income tax returns, reporting the same federal AGI on both tax returns, and claiming two dependent exemptions.
2. Subsequently, the IRS provided information to FTB, as reflected on separate FEDSTAR IRS Data Sheets (Fedstar Sheet), indicating that the IRS adjusted appellants' 2009 and 2010 federal returns.
 - a. For the 2009 tax year, the IRS disallowed a portion of the claimed Schedule A itemized deductions, all the claimed Schedule C business expenses, and all the claimed Schedule D long-term capital losses. The IRS increased appellants' federal taxable income, proposed additional tax, and imposed an accuracy-related penalty.
 - b. For the 2010 tax year, the IRS disallowed a portion of the claimed tax-deductible interest, all the claimed Schedule C other expenses, and all the claimed Schedule D long-term capital losses. The IRS also increased appellants' income to account for unreported wages, salaries, tips, etc. The IRS increased appellants' federal taxable income, proposed additional tax, and imposed an accuracy-related penalty.
 3. Appellants did not inform FTB of the federal changes to appellants' 2009 or 2010 federal tax accounts.
 4. Based on the information the IRS provided, FTB made corresponding adjustments, to the extent applicable under California law, to appellants' 2009 and 2010 California tax year accounts. On October 28, 2013, FTB issued appellants a separate Notice of Proposed Assessment (NPA) for each tax year.
 - a. For the 2009 tax year, the NPA proposed additional tax of \$5,042.00, an accuracy-related penalty of \$1,008.40, plus applicable interest.
 - b. For the 2010 tax year, the NPA proposed additional tax of \$4,416.00, plus applicable interest.
 5. On December 27, 2013, FTB received appellants' protest letters. Appellants protested the NPAs, contending that they were entitled to four dependent exemptions each tax year, as opposed to the two appellants claimed, and they were allowed the disallowed claimed tax-deductible interest and Schedule D long-term capital losses.

6. In response, FTB sent appellants a letter dated February 18, 2014, acknowledging their protest letters, and stating that the NPA amounts due were based on information received from the IRS. FTB explained that because state and federal laws were the same with respect to the issues involved, FTB would not adjust the proposed assessments unless the IRS issued a revised computation notice or other information indicating that the federal adjustments were reduced or cancelled. FTB also stated that it was unable to grant appellants' request to add additional dependents because the IRS had not allowed the additional dependents. FTB requested that if the IRS cancelled or revised its assessments, for appellants to provide FTB with a copy of a revised IRS audit report, or additional information to support their position.
7. In response, appellants sent FTB a letter in March 2014 stating that appellants filed a federal petition and were waiting for documents from the IRS. Appellants indicated that they would inform FTB upon receiving the IRS's decision.
8. By letters dated July 8, 2014, and April 14, 2015, FTB requested that if the IRS made a final determination, for appellants to provide FTB with a complete copy of the revised audit reports, and if a federal decision had not yet been made, for appellants to provide correspondence from the IRS indicating that the issues were still in dispute.
9. On April 22, 2015, appellants responded via facsimile and provided a notice from the United States Tax Court indicating that appellants and the IRS had a June 22, 2015, court date.
10. By letter dated December 15, 2015, FTB informed appellants that it was deferring action on appellants' 2009 and 2010 tax year accounts, in anticipation of appellants' final settlement with the IRS. FTB requested appellants provide FTB a final report from the IRS, including any adjustments to appellants' federal taxable income, within six months of the final federal determination.
11. By letter dated December 9, 2020, FTB informed appellants that it had not received communication from appellants regarding the outcome of their court case. FTB stated that information from the tax court indicated that appellants' appeal had concluded and that recent information from the IRS did not show any adjustments to appellants' 2009 or 2010 federal taxable income. FTB advised appellants that unless it received information

- regarding changes made to their 2009 and 2010 federal accounts within 30 days, FTB would affirm the NPAs for each year. FTB did not receive a response from appellants.
12. On January 26, 2021, FTB issued appellants a separate Notice of Action for each tax year, affirming the applicable NPA.
 13. This timely appeal followed.
 14. On appeal, FTB provided a copy of appellants' 2009 federal account transcript and 2010 account transcript, both dated March 9, 2021. Each account transcript shows for the applicable tax year: that the IRS assessed additional tax and imposed an accuracy-related penalty; the IRS closed its examination on November 12, 2012; an entry dated September 5, 2016, stating "Removed bankruptcy or other legal action", with a corresponding amount of zero dollars; that the IRS did not revise or cancel its adjustments to appellants' taxable income; and that appellants paid the outstanding liability.
 15. FTB made the following concessions on appeal:
 - a. FTB states that it considered the overall length of the appeal, including appellants' federal appeal of their tax liabilities in the United States Tax Court, and determined that 48 months was the reasonable amount of time needed to resolve appellants' protest. Therefore, FTB is abating interest for the period December 16, 2016, to December 9, 2020, for both tax years.
 - b. FTB is withdrawing the accuracy-related penalty for the 2009 tax year.

DISCUSSION

Issue 1: Whether appellants established error in FTB's proposed assessments of additional tax, which were based on final federal determinations, for the 2009 and 2010 tax years.

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. California taxpayers are required to notify FTB of any federal changes to their income, deductions, penalties, credits, or tax within six months of those changes becoming final. (R&TC, § 18622(a).) It is well settled that a deficiency assessment based on a final federal determination is presumed to be correct and that a taxpayer bears the burden of proving that FTB's determination is erroneous. (*Appeal of Gorin*, 2020-OTA-018P; *Appeal of Valenti*, 2021-OTA-093P.) 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, FTB properly assessed additional tax based upon federal adjustments. FTB received information from the IRS that it increased appellants' federal taxable income for both the 2009 and 2010 tax years. Specifically, for the 2009 tax year, the IRS disallowed all the claimed Schedule C business expenses, and all the claimed Schedule D long-term capital losses. For the 2010 tax year, the IRS disallowed a portion of the claimed tax-deductible interest, and all the claimed Schedule C other expenses. The IRS also increased appellants' 2010 income to account for unreported wages, salaries, tips, etc. Appellants' 2009 and 2010 federal account transcripts, which were obtained on March 9, 2021, indicate that appellants' adjusted taxable income did not change from the amount reported by the IRS. Furthermore, appellants' 2009 and 2010 federal determinations were not adjusted or canceled, and appellants paid the outstanding liabilities. It is appellants' burden to show that FTB's proposed assessments are erroneous. Appellants have not presented any argument or evidence to show error in the federal adjustments or in FTB's determinations based upon those adjustments.

In support of their assertion that they are entitled to four dependent exemptions for each tax year (which was not part of the federal adjustments or FTB's determinations), appellants provide a letter from appellant-husband's father stating that he stayed with them from February 2008 to January 2011, and that appellants can claim him as their dependent. For the 2009 and 2010 tax years, appellants claimed two dependent exemptions on their federal and California returns. According to appellants' 2009 and 2010 Fedstar Sheets and federal account transcripts, the IRS accepted appellants' two claimed dependent exemptions, and no further adjustments or revisions were made to the number of dependent exemptions for either tax year. Therefore, appellants have not shown that the IRS increased their dependent exemptions beyond two for the 2009 or 2010 tax year. Furthermore, appellants did not file an original return, nor an amended return, for either tax year claiming more than two dependent exemptions. As such, appellants have not demonstrated that they are entitled to more than the two dependent exemptions they claimed for each tax year.

Finally, while appellants contend that that the IRS reduced the federal adjustment for both tax years, appellants have not demonstrated what portion, if any, the IRS subsequently

allowed. Thus, appellants have not met their burden of proof. (*Appeal of Gorin, supra; Appeal of Valenti, supra.*)

Issue 2: Whether appellants have established a legal basis to abate interest.

Interest is not a penalty but is merely compensation for a taxpayer's use of money after it should have been paid to the state. (*Appeal of Gorin, supra.*) There is no reasonable cause exception to the imposition of interest. (*Ibid.*)

To obtain relief from interest, a taxpayer 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. The Office of Tax Appeals (OTA), however, does not have jurisdiction to review an FTB interest abatement determination under R&TC section 19112. (*Appeal of Moy, 2019-OTA-057P.*) Nevertheless, OTA does have jurisdiction over appeals of denied interest abatement requests under R&TC section 19104, as discussed below.

Under R&TC section 19104(a)(1), FTB may abate interest related to a proposed deficiency to the extent the interest is attributable in whole or in part to: (1) an unreasonable error or delay; (2) by an officer or employee of FTB; (3) in performing a ministerial or managerial act; and (4) which occurred after FTB contacted the taxpayer in writing regarding the proposed assessment, provided no significant aspect of that error or delay is attributable to the taxpayer. (R&TC, § 19104(a)(1), (b)(1); *Appeal of Gorin, supra.*) OTA's jurisdiction in an interest abatement case, however, is limited. We only review FTB's determination for abuse of discretion. (R&TC, § 19104(b)(2)(B).) To show an abuse of discretion, a taxpayer must establish that, in refusing to abate interest, FTB exercised its discretion arbitrarily, capriciously, or without sound basis in fact or law. (See *Woodral v. Commissioner* (1999) 112 T.C. 19, 23.) Interest abatement provisions are not intended to be routinely used to avoid the payment of interest, thus abatement should be ordered only where failure to abate interest would be widely perceived as grossly unfair. (See *Lee v. Commissioner* (1999) 113 T.C. 145, 149.)

FTB states that it considered the overall length of the appeal, including appellants' federal appeal of their tax liabilities in the United States Tax Court, and determined that 48 months was the reasonable amount of time needed to resolve appellants' protest. Therefore, FTB

is abating interest for the period December 16, 2016, to December 9, 2020, for both tax years.¹ We find no abuse of discretion with FTB's determination in this respect.

Appellants contend that after they notified FTB that their federal case was going to trial, FTB took no action and, consequently, no conclusion was reached during protest. However, FTB aptly responded indicating that it was deferring action on appellants' protests in anticipation of appellants' final settlement with the IRS. We find FTB's actions to defer the protests to be reasonable and appropriate, in light of the ongoing federal action. Furthermore, the onus is not on FTB to monitor the progress of appellants' federal case, because appellants are in the best position to know the federal outcome and promptly provide it to FTB in order to resume protest action. Therefore, we find that appellants have not established a legal basis to abate any additional interest.

With respect to appellants' request to resolve this matter through settlement, OTA has no authority to either settle or compromise a tax liability, and our jurisdiction in this case is limited to determining the correct amount of an appellants' tax liabilities. (*Appeals of Dauberger, et al.* (82-SBE-082) 1982 WL 11759.)²

¹ Appellants filed their protest letters on December 27, 2013; therefore, the reasonable amount of time of 48 months thereafter needed to resolve appellants' protest lapsed on December 27, 2017. As such, it is unclear how FTB decided to start interest abatement on December 16, 2016; however, since this ambiguity is in appellants' favor, it will not be addressed further.


² FTB has various resolution programs that appellants may wish to explore. During the appeal, FTB provided appellants information to contact FTB's Settlement Bureau.

HOLDINGS

1. Appellants have not established error in FTB’s proposed assessments of additional tax, which were based on final federal determinations, for the 2009 and 2010 tax years.
2. Appellants have not established a legal basis to abate any additional interest.

DISPOSITION

FTB’s actions are modified, as conceded by FTB on appeal, to abate interest for the period December 16, 2016, to December 9, 2020, for both tax years, and to abate the accuracy-related penalty for the 2009 tax year. We otherwise sustain FTB’s actions.

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 Sheriene Anne Ridenour
 Administrative Law Judge

We concur:
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 Daniel K. Cho
 Administrative Law Judge

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 Elliott Scott Ewing
 Administrative Law Judge

Date Issued: 12/16/2021