OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:	) OTA Case No. 20127061
R. LODGE	)
	)
	)
	)
	)

OPINION

Representing the Parties:

For Appellant: R. Lodge

For Respondent: Leoangelo C. Cristobal, Tax Counsel

J. JOHNSON, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, appellant R. Lodge appeals an action by respondent Franchise Tax Board proposing additional tax of $56,923, plus applicable interest, for the 2008 tax year and additional tax of $6,289, plus applicable interest, for the 2009 tax year.

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

ISSUES

1. Whether respondent's proposed assessments, which are based on final federal determinations, should be reduced.
2. Whether appellant has shown that interest should be abated.[1]

[1] Appellant asks for a reduction in both interest and penalties. While respondent indicated during its examination of the tax years at issue that penalties may apply, ultimately no penalties were imposed in the proposed assessments at issue here.

FACTUAL FINDINGS

1. Appellant timely filed 2008 and 2009 California tax returns, reporting overpayments for both years.[2]
2. On November 7, 2013, respondent informed appellant that it was beginning an examination of appellant's 2008 and 2009 tax years based on information it received showing the IRS made adjustments to appellant's 2008 and 2009 federal tax accounts.
3. Respondent's examination was deferred pending the ongoing activity of the federal examination, until September 13, 2018, when respondent received information from the IRS that the federal audit had concluded, and additional tax and interest was assessed on the federal side for both years.[3]
4. On June 10, 2019, respondent issued Notices of Proposed Assessment (NPAs) to appellant which reflected increases to appellant's taxable income in the same amounts as shown on the federal adjustments, and proposed additional tax and interest for the 2008 and 2009 tax years in the amounts at issue on appeal.
5. Appellant timely protested the NPAs, and the NPAs were ultimately affirmed when respondent issued Notices of Action (NOAs).[4] This timely appeal followed.

DISCUSSION

Issue 1: Whether respondent's proposed assessments, which are based on final federal determinations, should be reduced.

R&TC section 18622(a) requires a taxpayer to concede the accuracy of federal changes to a taxpayer's income or state where the changes are erroneous. It is well settled that a deficiency assessment based on a federal adjustment to income is presumed to be correct and a taxpayer

[2] Appellant filed joint returns for the years at issue, and the Notices of Action giving rise to this appeal were issued to both appellant and his joint filer. Only appellant's name and signature are provided on the appeal letter, and therefore the other joint filer is not a party to this appeal, but actions and events discussed herein may be attributable to appellant, his joint filer, or both.

[3] From the evidence provided on appeal, it appears as though the federal audit closed in November 2015. Correspondence in the record shows that respondent asked appellant to inform it when the federal audit concluded, but it did not receive such notice from appellant.

[4] Respondent provided a detailed response on June 2, 2020, to appellant's protest letter dated August 9, 2019, and asked appellant to provide any additional information in response by July 3, 2020. After no response was received, the NOAs were issued on November 19, 2020.

bears the burden of proving with credible, competent, and relevant evidence that respondent's determination is incorrect. (*Appeal of Valenti*, 2021-OTA-093P; *Appeal of Gorin*, 2020-OTA-018P.)

Here, respondent received information from the IRS that appellant's federal taxable income was adjusted for the 2008 and 2009 tax years, and similarly revised appellant's California taxable income for both years. Appellant does not assert that the proposed additional tax amounts are incorrect, but instead provides reasons why the payment of the amount due is difficult and asks for a lump sum settlement for both tax years.

While we acknowledge that taxpayers may encounter economic hardships when faced with proposed additional tax liabilities and interest, we lack the authority to make discretionary adjustments to the amount of a tax assessment based on a taxpayer's difficulties or even inability to pay.[5] (*Appeal of Robinson*, 2018-OTA-059P.) Our role in the appeals process is focused on whether the correct amount of tax is assessed, and in this appeal, we find no error in, or reason to reduce, respondent's proposed assessments for the years at issue.

Issue 2: Whether appellant has shown that interest should be abated.

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*.) Under R&TC section 19104, respondent 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 respondent; (3) in performing a ministerial or managerial act; and (4) which occurred after respondent 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); see also *Appeal of Gorin*, *supra*.)

OTA's jurisdiction in an interest abatement case, however, is limited. We only review respondent'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, respondent exercised its discretion arbitrarily, capriciously, or without sound basis in fact or law. (*Appeal of*

[5] After this appeal becomes final, appellant may wish to contact respondent to determine eligibility for its Offer in Compromise program or whether an installment payment agreement is appropriate. (See, for example, https://www.ftb.ca.gov/pay/payment-plans/index.asp for information on respondent's installment payment program.)

Gorin, *supra*.) Interest abatement provisions are not intended to be routinely used to avoid the payment of interest, and thus abatement should be ordered only "where failure to abate interest would be widely perceived as grossly unfair." (*Lee v. Commissioner* (1999) 113 T.C. 145, 149.)

Appellant contends that unexplained delays by the IRS and respondent for the years at issue have resulted in an excessive accrual of interest. The tax years on appeal are more than ten years prior to the filing of this appeal, and as such the amount of interest that has accrued is substantial (approximately 50 percent or more of the amount of tax for each year). However, a review of the record does not show that respondent caused an unreasonable delay, for purposes or our analysis under R&TC section 19104, with regard to the proposed assessments at issue.

Respondent accepted appellant's returns as filed, and only upon receiving information of a federal adjustment was respondent made aware that the returns warranted examination. This examination, which began in November 2013, was deferred when appellant informed respondent that the federal examination was still ongoing. Respondent instructed appellant to provide a copy of the final federal determination once it was completed, an act also required by R&TC section 18622, but appellant failed to do so. Instead, respondent received notice from the IRS that the federal determination had gone final, apparently nearly three years after the federal determination ended. Respondent issued the NPAs nine months after receiving notice that the federal determinations had gone final, which is within the four-year statute of limitations provided for in R&TC section 19060. After the back-and-forth process of the protest period, respondent issued the NOAs in a reasonable time.

In the above timeline, we find no unreasonable error attributable to the action of respondent, and therefore find that respondent did not abuse its discretion in denying appellant's request for interest abatement.[6]

[6] With regard to any delays that may be attributable to the IRS, R&TC section 19104(a)(3) provides that interest may be abated when interest is also abated on the federal side pursuant to Internal Revenue Code section 6404(e) (for unreasonable errors or delays by the IRS). There is no indication from the record that any such interest abatement was provided on the federal side for the years at issue (interest was reduced in the 2009 tax year account, but in relation to a change in tax assessed and not based on an unreasonable error or delay). Accordingly, there is no evidence supporting the abatement of interest based on actions by the IRS here.

HOLDINGS

1. Appellant has not shown that respondent's proposed assessments, which are based on final federal determinations, should be reduced.
2. Appellant has not shown that interest should be abated.

DISPOSITION

Respondent's actions are sustained.

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John O Johnson
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John O. Johnson
Administrative Law Judge

We concur:

DocuSigned by:
Natasha Ralston
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Natasha Ralston
Administrative Law Judge

DocuSigned by:
Sheriene Anne Ridenour
67F043D83EF547C...
Sheriene Anne Ridenour
Administrative Law Judge

Date Issued: 2/16/2022