

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
T. BARNES

) OTA Case No. 21088478
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OPINION

Representing the Parties:

For Appellant: T. Barnes, Taxpayer

For Respondent: Brian Werking, Tax Counsel III

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, T. Barnes (appellant) appeals an action by Franchise Tax Board (respondent) proposing additional tax of \$1,685, plus interest, for the 2016 taxable year.

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

ISSUES

- 1. Whether FTB’s action, based on a federal audit, should be sustained.
- 2. Whether interest should be waived.

FACTUAL FINDINGS

- 1. Appellant’s 2016 federal income tax return was examined by the IRS, which resulted in adjustments that included the denial of his head of household filing status, disallowance of most of his itemized deductions, and inclusion of omitted income.
- 2. To the extent allowable under California law, respondent made corresponding adjustments to appellant’s 2016 California personal income tax return (Form 540), and issued a Notice of Proposed Assessment (NPA) to him. Appellant protested the NPA.
- 3. During protest, respondent allowed appellant’s head of household filing status, but otherwise affirmed the NPA.

DISCUSSION

Issue 1: Whether FTB’s action, based on a federal audit, should be sustained.

When the IRS makes changes to a taxpayer’s federal tax return, the taxpayer must report those changes to FTB, and concede the accuracy of the federal changes or state why the changes are erroneous. (R&TC, § 18622(a).) A deficiency assessment based on a federal audit report is presumptively correct and a taxpayer bears the burden of proving that the determination is erroneous. (*Appeal of Gorin*, 2020-OTA-018P.) Unsupported assertions by taxpayers are insufficient to satisfy their burden of proof with respect to a proposed assessment based on a federal action. (*Ibid.*)

Here, FTB issued its NPA based on a final federal determination, and thus, FTB’s proposed assessment is presumptively correct. (*Appeal of Gorin, supra.*) Appellants do not argue, and the evidence does not suggest, that FTB erred in its adjustments to appellant’s income for the 2016 taxable year. Instead, appellant asserted during protest that his IRS account transcript proves that his filing status should be head of household, which respondent conceded. Appellant argued during this appeal that following the IRS audit, he thought that he did not owe additional tax to respondent even though he had to pay IRS. However, appellant did not substantiate this argument; therefore the law requires that respondent’s income adjustments be sustained.

Issue 2: Whether interest should be waived.


The imposition of interest is mandatory. (R&TC, § 19101(a).) Interest is not a penalty, but is compensation for a taxpayer’s use of money which should have been paid to the state. (*Appeal of Moy*, 2019-OTA-057P.) There is no reasonable cause exception to the imposition of interest. To obtain relief from interest a taxpayer must qualify under one of the waiver provisions of R&TC sections 19104 (pertaining to unreasonable error or delay by respondent in the performance of a ministerial or managerial act), 19112 (pertaining to extreme financial hardship caused by significant disability or other catastrophic circumstance), or 21012 (pertaining to reasonable reliance on the written advice of a legal ruling by respondent’s chief counsel). (*Appeal of Moy, supra.*) Appellant has not alleged, and the record does not reflect, that any of these waiver provisions are applicable here.

HOLDINGS

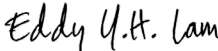
1. Appellant properly filed his 2016 Form 540 using the head of household filing status; respondent’s income adjustments (which were based on an IRS examination) to appellant’s 2016 Form 540 were proper.
2. Appellant has not shown that interest should be waived.


DISPOSITION

Respondent’s action, which includes its concession that appellant properly filed his 2016 return using the head of household status, is sustained.

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 Tommy Leung
 Administrative Law Judge

We concur:

DocuSigned by:

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 Eddy Y.H. Lam
 Administrative Law Judge

DocuSigned by:

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 Richard Tay
 Administrative Law Judge

Date Issued: 6/16/2022