

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
D. CROSBY¹

) OTA Case No. 21078122
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OPINION

Representing the Parties:

For Appellant: D. Crosby
For Respondent: Kristina Pehur, Graduate Student Assistant

J. LAMBERT, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, D. Crosby (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$677, plus interest, for the 2016 tax year.

Appellant waived the right to an oral hearing. Therefore, this appeal is decided based on the written record.

ISSUES

1. Whether appellant has shown error in FTB’s proposed assessment of additional tax, which is based on a federal determination.
2. Whether interest should be abated.

FACTUAL FINDINGS

1. Appellant and his spouse timely filed a joint 2016 California Resident Income Tax Return (Form 540).
2. FTB received federal information showing that the IRS adjusted the couple’s federal return to include unreported taxable pension/annuities income of \$9,141.

¹ Appellant’s spouse did not sign the appeal letter and, therefore, is not a party to this appeal.

3. Appellant’s federal Wage and Income Transcript shows that appellant received a gross distribution of \$9,141 from the U.S. Office of Personnel Management during 2016 which was reported to appellant on a Form 1099-R, Distributions from Pensions, Annuities, etc.
4. Based on the federal information, FTB issued a Notice of Proposed Assessment (NPA) on June 10, 2020, that increased the couple’s taxable income by \$9,141 and proposed additional tax of \$677, plus interest.
5. Appellant timely protested the NPA, and FTB affirmed the NPA in a Notice of Action.
6. This timely appeal followed.

DISCUSSION

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

A taxpayer shall concede the accuracy of federal changes to the taxpayer’s income or state where the determination is erroneous. (R&TC, § 18622(a).) It is well settled that a deficiency assessment based on a federal audit report is presumptively correct and that a taxpayer bears the burden of proving that the determination is erroneous. (*Appeal of Gorin*, 2020-OTA-018P.) Unsupported assertions are not sufficient to satisfy a taxpayer’s burden of proof. (*Appeal of Bracamonte*, 2021-OTA-156P.)

R&TC section 17071 incorporates Internal Revenue Code (IRC) section 61, which defines “gross income” as “all income from whatever source derived,” including annuity and pension income. Unless an exception applies, a distribution from a qualified retirement plan or an individual retirement account is included in income for the year of distribution. (IRC, §§ 402(a), 408(d).)²

FTB based its determination on federal adjustments made by the IRS. There is no indication on appellant’s federal account transcript that the IRS revised the federal adjustment. In addition, appellant’s federal Wage and Income Transcript shows that appellant received a gross distribution of \$9,141 which was reported to appellant and the IRS on a Form 1099-R. Appellant does not contend that he did not receive the pension distribution from the U.S. Office of Personnel Management. Appellant contends that the proposed assessment results in an incorrect amount of tax due and notes that he made a tax payment of \$1,049. The NPA revised

² California conforms to IRC sections 402 and 408 in relevant part pursuant to R&TC section 17501(a).

the tax from \$2,132 as reported on the return to \$2,809, which resulted in the \$677 proposed assessment at issue in this appeal. The payment of \$1,049 was applied to the original tax of \$2,132 as reported on the return. The burden is on appellant to show error in FTB's determination, and he does not provide any arguments or evidence to show error in the federal adjustment or FTB's proposed assessment of additional tax based on the federal adjustment. Therefore, appellant has not shown error in FTB's proposed additional tax.

Issue 2: Whether interest should be abated.

The imposition of interest is mandatory. (R&TC, § 19101(a); *Appeal of Balch*, 2018-OTA-159P.) Interest is charged from the due date of the tax payment to the date the tax is paid. (R&TC, §19101(a).) Interest is not a penalty, but it is compensation for the 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 and interest can only be waived in certain limited situations when authorized by law. (*Ibid.*)

To obtain relief from interest, a taxpayer must qualify under R&TC sections 19104, 19112, or 21012. (*Appeal of Moy, supra.*) OTA has no jurisdiction to determine whether appellant is entitled to the abatement of interest under R&TC section 19112. (*Ibid.*) The relief of interest under R&TC section 21012 is not relevant here, because FTB did not provide appellant with any written advice. Under R&TC section 19104(a)(1), FTB may abate all or a part of any interest on a deficiency to the extent that interest is attributable in whole or in part to any unreasonable error or delay committed by FTB in the performance of a ministerial or managerial act. (R&TC, § 19104(a)(1).) OTA has jurisdiction to determine whether FTB's denial of interest abatement under R&TC section 19104 was an abuse of discretion. (R&TC, § 19104(b)(2)(B); *Appeal of Moy, supra.*)

Appellant contends that interest should not be charged because the amount due was not reported to him for four years. However, FTB had no duty to notify appellant sooner, and FTB's proposed assessment was timely issued. (See *Appeal of Miller* (84-SBE-119) 1984 WL 16199.) In addition, an error or delay can only be considered when no significant aspect of the error or delay is attributable to the taxpayer and after FTB has contacted appellant in writing with respect to the deficiency or payment. (R&TC, § 19104(b)(1).) Appellant's arguments relate to events occurring before the issuance of the NPA and cannot be considered. Furthermore, while the NPA was issued on June 10, 2020, the federal assessment was made on November 5, 2018.


R&TC section 18622(a) obligated appellant to report any federal changes to FTB within six months of any final federal determination changing or correcting gross income or deductions. Appellant did not report the federal changes and, therefore, a significant aspect of any alleged delay is attributable to appellant. Accordingly, interest should not be abated.

HOLDINGS

1. Appellant has not shown error in FTB’s proposed assessment of additional tax, which is based on a federal determination.
2. Interest should not be abated.


DISPOSITION

FTB’s action is sustained.


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 Josh Lambert
 Administrative Law Judge

We concur:

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 Cheryl L. Akin
 Administrative Law Judge

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 Josh Aldrich
 Administrative Law Judge

Date Issued: 12/15/2022