

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 220811250  
G. PITA )  
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**OPINION**

Representing the Parties:

For Appellant: G. Pita  
For Respondent: Andrea Watkins, Legal Assistant

V. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, G. Pita (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$4,802 and applicable interest for the 2017 tax year.

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

**ISSUES**

1. Whether appellant has shown error in FTB’s proposed assessment, which is based on a federal determination.
2. Whether appellant is entitled to interest abatement.

**FACTUAL FINDINGS**

1. Appellant timely filed a California income tax return for the 2017 tax year.
2. Subsequently, FTB received federal information showing that the IRS had increased appellant’s 2017 federal return for unreported pension or annuity income of \$64,129. Based on the federal information, FTB issued a Notice of Proposed Assessment (NPA) to appellant that applied the federal adjustment to appellant’s California return, resulting in additional tax of \$4,802, plus interest.

3. Appellant protested the NPA, requested interest abatement, and claimed financial hardship.
4. FTB issued a Notice of Action affirming the NPA and denied the request for interest abatement on the basis that appellant had failed to assert proper grounds for abatement.
5. This timely appeal followed.

### DISCUSSION

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

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 the taxpayer bears the burden of proving that FTB’s determination is erroneous. (*Appeal of Valenti*, 2021-OTA-093P, citing *Todd v. McColgan* (1949) 89 Cal.App.2d 509, 514.) In the absence of credible, competent, and relevant evidence showing that FTB’s determination is incorrect, it must be upheld. (*Appeal of Valenti, supra.*)

Gross income means all income from whatever source derived, including interest, dividends, and annuity and pension income, unless the items of income are specifically excluded by law. (Internal Revenue Code (IRC), § 61(a); R&TC, § 17071; Treas. Reg. § 1.61-1(a).) Appellant asserts that she was unaware that she needed to report the distribution from her 401(k) account because she rolled the distribution into an individual retirement account (IRA).

While the law provides for a tax-free rollover of funds from certain qualified accounts into other qualified accounts (see, e.g., IRC, §§ 401(a)(31), 402(a), and 408(d)(3)<sup>1</sup>), appellant has not provided sufficient evidence or information to indicate that she qualified for a tax-free rollover. For example, the record does not reflect that the funds were directly transferred into a qualified retirement account and the Form 1099-R issued to appellant by Fidelity Investments reports that the \$64,129 gross distribution is a “normal distribution” and that the entire amount is taxable. Simply stated, appellant has not provided any information or documentation to substantiate her contentions and the information in the record reflects that it was a taxable

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<sup>1</sup> IRC sections 401 through 408 are generally incorporated into California law pursuant to R&TC section 17501.

distribution rather than a non-taxable rollover. Appellant's unsupported statements are not sufficient to rebut the presumption that FTB's proposed assessment is correct. (*Appeal of Gorin*, 2020-OTA-127P.) Based on the foregoing, appellant has not met her burden of proof and no adjustment is warranted for the 2017 tax year.

Appellant also expressed concern regarding her ability to pay the liability because she suffers from financial hardship. However, the Office of Tax Appeals (OTA) lacks the authority to make discretionary adjustments to the amount of a tax assessment based on a taxpayer's ability to pay. (*Appeal Robinson*, 2018-OTA-059P.) OTA's function in the appeals process is to determine the correct amount of the taxpayer's California income tax liability.<sup>2</sup> (*Ibid.*) Based on the evidence and the earlier conclusion that the liability was correctly assessed, OTA has no legal basis upon which it can make any adjustment to the amount assessed.

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

If any amount of the tax is not paid by the due date, interest is required to be imposed from the due date until the date the taxes are paid. (R&TC, § 19101(a).) Interest is not a penalty but is compensation for the taxpayer's use of money which should have been paid to the state. (*Appeal of Balch*, 2018-OTA-159P.) Imposition of interest is mandatory, and it can only be abated in certain limited situations when authorized by law. (R&TC, § 19101(a); *Appeal of Balch*, *supra*.) There is no reasonable cause exception to the imposition of interest. (*Appeal of Moy*, 2019-OTA-057P.) To obtain interest relief, appellant must qualify under R&TC section 19104 or 21012. (*Ibid.*) However, appellant has not alleged facts or substantive arguments suggesting that these statutory provisions apply. Thus, appellant has not established any basis for interest abatement for the tax year at issue.

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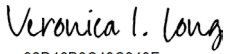
<sup>2</sup> FTB has its own offer in compromise program, which considers a taxpayer's ability to pay; however, OTA has no jurisdiction over this program.

HOLDINGS

1. Appellant has not shown error in FTB’s proposed assessment, which is based on a federal determination.
2. Appellant is not entitled to interest abatement.

DISPOSITION

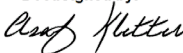
FTB’s action is sustained.

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Veronica I. Long  
 Administrative Law Judge

We concur:

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Asaf Kletter  
 Administrative Law Judge

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Andrea L.H. Long  
 Administrative Law Judge

Date Issued: 3/16/2023