

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
D. BLACK

) OTA Case Number 22019588
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OPINION

Representing the Parties:

For Appellant: D. Black
For Respondent: Nancy Parker, Tax Counsel IV
For Office of Tax Appeals: Tom Hudson, Tax Counsel III

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, D. Black (appellant) appeals from the action of the Franchise Tax Board (FTB) proposing to assess additional tax of \$1,626.63, plus applicable interest, for the 2017 taxable year. Appellant waived the right to an oral hearing; therefore, the Office of Tax Appeals (OTA) decides the matter based on the written record.

ISSUES

1. Has appellant shown error in the proposed assessment of additional tax for 2017, which is based on federal adjustments?
2. Has appellant shown that she is entitled to abatement or waiver of interest?

FACTUAL FINDINGS

1. FTB received information that the IRS adjusted appellant’s 2017 federal income tax return to reflect \$20,812 of unreported wage income. The IRS also adjusted appellant’s itemized deductions and assessed additional tax and penalties.

2. FTB made corresponding adjustments to appellant's California tax account and issued a Notice of Proposed Assessment (NPA) proposing to assess additional tax of \$1,626.63, plus interest, which it later affirmed in a Notice of Action (NOA).¹
3. As of July 1, 2022, the IRS had not reduced or canceled the federal adjustments. Appellant set up an installation payment plan with the IRS and paid the 2017 federal assessment in full.
4. Appellant timely appealed FTB's action denying her protest of the NPA.

DISCUSSION

Issue 1: Has appellant shown error in the proposed assessment of additional tax for 2017, which is based on federal adjustments?

R&TC section 18622(a) requires taxpayers to report federal changes to their tax returns to FTB and either concede the accuracy of the federal changes or to state where the changes are erroneous. It is well settled that a deficiency assessment based on a federal audit report is presumed to be correct, and the taxpayer bears the burden of proving that FTB's proposed assessment is erroneous. (*Appeal of Gorin*, 2020-OTA-018P.) The applicable burden of proof is by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(c).) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof with respect to an assessment based on federal adjustments. (*Appeal of Gorin, supra.*) In the absence of credible, competent, and relevant evidence showing that FTB's determination is incorrect, such determination must be upheld. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.)

Here, appellant has not provided any evidence of error in FTB's proposed assessment or the IRS audit adjustments. Appellant seems to assert that she filed an amended federal return and was waiting for the IRS to modify or cancel its assessment. Yet appellant's federal account transcript shows that as of July 1, 2022, the IRS transcript does not reflect that appellant has filed an amended return with the IRS, or that the IRS is otherwise reconsidering its audit assessment, or that the IRS has canceled or modified its assessment. In fact, appellant entered into an installment agreement plan and made the last payment to the IRS on February 22, 2022, which paid the federal liability in full. Appellant has not explained the nature of her disagreements with the IRS or FTB and has not submitted any evidence of error in either the IRS assessment or

¹ Neither party submitted the NPA. The NOA reflects that FTB affirmed the NPA in its entirety.

FTB's proposed assessment based thereon. Therefore, OTA has no basis to overturn or modify FTB's proposed assessment.

Issue 2: Has appellant shown that she is entitled to abatement or waiver of interest?

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 that 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 relief from interest, taxpayers must generally qualify under the provisions of R&TC sections 19104, 21012, or 19112. R&TC section 19104 provides for abatement when the interest is attributable to any unreasonable error or delay by an officer or employee of FTB when performing a ministerial or managerial act. These circumstances are neither alleged nor shown to be present here. The relief of interest under R&TC section 21012 does not appear to be relevant here because appellant has not alleged or shown that she reasonably relied on written advice from FTB. Lastly, OTA does not have jurisdiction to review FTB's denial of interest waiver pursuant to R&TC section 19112. (*Appeal of Moy*, *supra*.)

The record in this appeal does not contain any evidence that interest was calculated incorrectly.² Appellant appears to argue that interest should be abated because the IRS mailed a letter to appellant's previous address instead of to her current address, but even if true, that is not a basis to provide appellant relief from interest on her California tax liability. Appellant has, therefore, not established a basis to abate or waive interest.


² OTA invited appellant to clarify her arguments and to provide supporting evidence. Appellant did not respond.

HOLDINGS

1. Appellant has not shown error in the proposed assessment of additional tax for 2017, which was based on federal adjustments.
2. Appellant has not shown that she is entitled to abatement or waiver of interest.


DISPOSITION

FTB’s action is sustained.

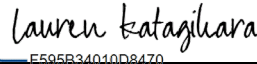
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 Teresa A. Stanley
 Administrative Law Judge

We concur:

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 Sara A. Hosey
 Administrative Law Judge

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 Lauren Katagihara
 Administrative Law Judge

Date Issued: 4/6/2023