

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
M. RAMIREZ

) OTA Case No. 220510294
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OPINION

Representing the Parties:

For Appellant: M. Ramirez

For Respondent: Camille Dixon, Attorney

For Office of Tax Appeals: Oliver Pfof, Attorney

E. LAM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, M. Ramirez (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$743 and applicable interest for the 2017 tax year.

Appellant elected to have this appeal determined pursuant to the procedures of the Small Case Program. Those procedures require the assignment of a single administrative law judge. (Cal. Code Regs., tit. 18, § 30209.1.) Appellant waived the right to an oral hearing and 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 federal adjustments.
2. Whether appellant is entitled to interest abatement.

FACTUAL FINDINGS

1. Appellant and her spouse timely filed a joint 2017 California resident income tax return, electing the married filing jointly status.¹

¹ Appellant’s spouse is not a party to this appeal.

2. FTB received a FEDSTAR Data Sheet from the IRS showing the IRS examined appellant and her spouse's joint 2017 federal income tax return, resulting in adjustments that disallowed the claimed itemized and miscellaneous deduction. As such, appellant and her spouse were only allowed to take the standard deduction.
3. Based on the information received from the IRS, FTB made the same corresponding adjustments to appellant and her spouse's joint 2017 California resident income tax return, issuing a Notice of Proposed Assessment (NPA) proposing an additional tax of \$743 and applicable interest.
4. Appellant protested the NPA, explaining that she did not owe FTB the amount proposed in the NPA because she had already paid FTB \$2,916.57. Appellant also stated that it was not clear to her why she had to keep paying the additional tax liabilities and not her spouse, who was also named in the NPA. In appellant's protest letter, appellant claims that she is separated from her spouse, but they are not divorced.
5. FTB responded to appellant's protest by letter explaining that the \$2,916.57 it received was related to previous tax years (2015 and 2016) unrelated to this appeal.
6. FTB issued a Notice of Action affirming the NPA without modification.
7. This timely appeal followed.
8. Appellant produced a copy of the *Earnings Withholding Order For Taxes* (Order) requesting \$2,916.57 due for the 2015 and 2016 tax years.
9. On appeal, FTB acknowledges the proposed assessment failed to allow appellant a claimed nonrefundable renters' credit in the amount of \$120. FTB agrees to reduce the additional tax from \$743 to \$623 to account for that credit.
10. The Office of Tax Appeals (OTA) deferred the proceedings in this appeal at appellant's request so she could apply for innocent spouse relief on FTB's Form 705. Appellant submitted a copy of a retainer agreement from Rainbow Services, seeking professional assistance relating to divorce proceedings. Appellant additionally supplied documentation related to an incident of domestic violence that occurred on August 8, 2022. However, FTB did not receive from appellant a completed Form 705 or response to FTB's request for additional information.

DISCUSSION

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

R&TC section 18622(a) provides that a taxpayer shall either concede the accuracy of a federal determination or state wherein it is erroneous. A deficiency assessment based on a federal adjustment to income is presumed to be correct and a taxpayer bears the burden of proving with credible, competent, and relevant evidence that FTB’s determination is erroneous. (*Appeal of Valenti*, 2021-OTA-093P.)

Appellant does not offer an argument or provide any evidence challenging the accuracy of FTB’s determination or the underlying federal adjustments. Rather, appellant first asserts that since she already paid FTB \$2,916.57 pursuant to the issued Order, she should not be responsible for the additional tax for the 2017 tax year. Appellant’s second assertion is that it is unfair that her spouse is not being held responsible for the liabilities as well. Appellant further claims that the adjustments are the result of mistakes made by her spouse, and having her pay for those mistakes is causing her and her dependent financial difficulties.² Appellant contends that she is separated but not divorced from her spouse.

In response to appellants’ first contention, the payment of \$2,916.57 as issued by the Order relates to the 2015 and 2016 tax years, not to the 2017 tax year at issue. The \$2,916.57 levy payments did not reduce or eliminate any of the purported balance due for the 2017 tax year. As such, it is irrelevant that appellant remitted payments for other tax years not at issue.

As to appellant’s second contention, California law provides that when a joint return is filed by a married couple, each spouse is jointly and severally liable for the tax due. (R&TC, § 19006(b).) Accordingly, FTB is entitled to assert the entire tax liability against either spouse, regardless of his or her financial position. (*Appeal of Bennie A. Jefferson* (79-SBE-167) WL 4145; *Appeal of Arthur A. and Dorothy L. Reynolds* (75-SBE-129) WL 3283.) Thus, FTB properly asserted the tax liability from the joint 2017 California resident income tax return

² OTA acknowledges appellant’s arguments regarding financial difficulties; however, OTA lacks authority to make discretionary adjustments to the amount of tax assessed based on a taxpayer’s inability to pay. (*Appeal of Robinson*, 2018-OTA-059P.) After the decision in this appeal becomes final, appellant may wish to contact FTB 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/if-you-cant-pay/offer-in-compromise.html>, for information on FTB’s offer in compromise program, and <https://www.ftb.ca.gov/pay/payment-plans/index.asp>, for information on FTB’s installment payment program.)

against appellant.³ Appellant has not otherwise shown error in FTB’s determination.

Issue 2: Whether appellant is entitled to interest abatement.

Interest is not a penalty, but is compensation for a taxpayer’s use of money after it should have been paid to the state. (*Appeal of Gorin*, 2020-OTA-018P.) There is no reasonable cause exception to the imposition of interest. (*Appeal of Moy*, 2019-OTA-057P.)

To obtain relief from interest, a taxpayer must qualify under one of three statutes: R&TC sections 19104, 19112, or 21012. R&TC section 19014 does not apply here because appellant does not allege, nor does the evidence show, that the interest at issue is attributable, in whole or in part, to any unreasonable error or delay by an officer or employee of FTB when performing a ministerial or managerial act. R&TC section 21012 also does not apply as FTB did not provide appellant with any requested written advice. Lastly, OTA does not have jurisdiction to review FTB’s denial of a waiver of interest under R&TC section 19112, which requires a showing of extreme financial hardship. (*Appeal of Moy, supra.*) Therefore, appellant has not demonstrated that she is entitled to interest abatement.


³ A taxpayer who files a joint return may be relieved of all or a portion of the joint and several liability if the taxpayer qualifies for innocent spouse relief. (R&TC, § 18533.) The request is made to FTB on an FTB Form 705, titled *Innocent Joint Filer Relief Request*. OTA deferred proceedings in this appeal at appellant’s request so she could apply to FTB for innocent spouse relief. However, FTB did not receive from appellant a completed FTB Form 705. FTB also sent appellant a request for information so it could evaluate a prospective request for relief, but appellant did not respond to FTB’s request for information. Therefore, OTA will not discuss the innocent spouse relief further in this Opinion. However, appellant may submit a completed Form 705 and supporting documentation to FTB in connection with the 2017 tax year.

HOLDINGS

1. Appellant has not shown error in FTB’s proposed assessment.
2. Appellant is not entitled to interest abatement.

DISPOSITION

The additional tax is reduced from \$743 to \$623 to account for appellant’s claimed nonrefundable renters’ credit, as agreed to by FTB, and interest is to be adjusted accordingly. FTB’s action is otherwise sustained.

DocuSigned by:

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Eddy Y.H. Lam
Administrative Law Judge

Date Issued: 10/16/2023