

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

In the Matter of the Appeal of:  
**C. WALTER**

) OTA Case No. 220911446  
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**OPINION**

Representing the Parties:

For Appellant: C. Walter

For Respondent: David Muradyan, Attorney

A. KLETTER, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, C. Walter (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$4,987 and applicable interest for the 2017 tax year.

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

**ISSUE**

Whether appellant has shown error in FTB’s proposed assessment of tax.

**FACTUAL FINDINGS**

1. On April 11, 2018, appellant filed her 2017 California Resident Income Tax Return (return), reporting an adjusted gross income (AGI) of \$88,703, tax of \$1,942,<sup>1</sup> income tax withholdings of \$3,755, and an overpayment of \$1,813. Appellant requested that the overpaid tax be refunded to her.

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<sup>1</sup> Appellant handwrote her return. The tax calculated on the return based on appellant’s taxable income was incorrect.

2. FTB erroneously processed appellant's return. FTB issued a Notice of Tax Return Change – Refund revising her tax to zero. On May 3, 2018, as a result of FTB's processing error, it erroneously issued a warrant to appellant refunding \$3,735.<sup>2</sup>
3. FTB subsequently reviewed appellant's return and discovered its error. On February 4, 2022, FTB notified appellant in correspondence that a processing error had occurred, resulting in the erroneous refund of \$3,735. FTB also notified appellant that, based on taxable income reported on her return, she owed additional tax of \$1,252, for a total of \$4,987. FTB requested that appellant return the erroneous refund and pay the additional tax of \$4,987 within 30 days of its correspondence.
4. When appellant did not respond, on April 13, 2022, FTB issued a Notice of Proposed Assessment (NPA) proposing to assess additional tax of \$4,987 plus interest. Appellant timely protested the NPA. Appellant enclosed a corrected return reporting an AGI of \$88,703, the same AGI as on her original return, but now self-assessing a tax of \$4,987.<sup>3</sup>
5. FTB acknowledged the protest and affirmed its position in a letter dated May 23, 2022. On September 1, 2022, FTB issued a Notice of Action affirming the NPA.
6. This timely appeal followed.
7. On appeal, appellant provides her bank statement for the period from May 12, 2017, through June 13, 2017.<sup>4</sup> FTB on appeal provides a copy of appellant's 2016 tax year account record, and a certified copy of the May 3, 2018 warrant bearing the check image, deposit date of May 14, 2018, and appellant's signature on the endorsement line.

#### DISCUSSION

FTB's determination of tax is presumed to be correct, and a taxpayer has the burden of proving error. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509; *Appeal of Chen and Chi*, 2020-OTA-021P.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Chen and Chi, supra.*) In the absence of credible, competent, and relevant evidence showing that FTB's determination is incorrect, it must be upheld. (*Ibid.*)

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<sup>2</sup> FTB refunded the withholding reflected in its system of \$3,735. Appellant's Form W-2 and Form 1099 report income tax withholding totaling \$3,755. The record does not reveal the reason for the minor difference.

<sup>3</sup> Appellant's corrected return included income tax withholdings of \$3,755 which were previously refunded.

<sup>4</sup> Appellant provided a check satisfying her tax liability, excluding interest, which the Office of Tax Appeals forwarded to FTB.

FTB may assess and collect an erroneous refund provided that it issues a notice and demand for repayment within two years after the date of the erroneous refund, or within the applicable period within which it may timely issue an NPA, whichever period expires later. (R&TC, § 19368.) In general, FTB must issue an NPA within four years of the date the taxpayer filed his or her California return. (R&TC, § 19057(a).) Returns filed before the original due date of the return are deemed as filed on the original due date. (R&TC, § 19066.) Appellant does not allege, and the evidence does not show, that FTB untimely issued the NPA proposing to assess an amount which included the erroneous refund.<sup>5</sup>

Appellant asserts that her tax liability is not correctly calculated because she was refunded only \$458 on May 16, 2017, and never received a refund of \$3,735. Appellant claims that the tax due should be only \$1,690.<sup>6</sup> As support, appellant encloses her bank statement for the period from May 12, 2017, through June 13, 2017, which includes an electronic deposit for \$458 from FTB. FTB asserts that the refund of \$458 was for the 2016 tax year, which is not at issue. It provides appellant's 2016 tax year account record which shows a refund of \$458, effective on May 10, 2017. This panel agrees with FTB. Here, the 2016 tax year is not the relevant tax year at issue, and the refund that appellant received on May 16, 2017, is not relevant to FTB's determination that she owed tax for the 2017 tax year. FTB also claims that appellant deposited her refund for the 2017 tax year on May 14, 2018. It provides a certified copy of the May 3, 2018 warrant bearing the check image, deposit date, and appellant's signature on the endorsement line. Appellant provides no explanation or evidence to explain the signature on the warrant or to show that she did not receive a refund on May 14, 2018, such as her bank records from the period of May 2018. Appellant's submitted bank statements were for the wrong year (i.e., May 2017, instead of May 2018.) In the absence of credible, competent, and relevant evidence showing that FTB's determination is incorrect, this panel must uphold FTB's determination. (*Ibid.*)

Interest must be assessed from the date a tax payment is due through the date that it is paid. (R&TC, § 19101(a).) Imposing interest is mandatory; it is not a penalty, but it is

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<sup>5</sup> Appellant's return was filed on April 11, 2018. As this is before the original due date of April 15, 2018, for statute of limitations purposes, the return is treated as filed on April 15, 2018. (See R&TC, § 19066.) Four years from this date is April 15, 2022. Therefore, FTB's April 13, 2022 NPA was timely.

<sup>6</sup> On her corrected return, appellant reported increased tax due of \$1,232. \$1,690 is equal to the appellant's self-assessed additional tax due plus the amount she asserts was refunded ( $\$1,232 + \$458 = \$1,690$ ).

compensation for appellant's use of money after it should have been paid to the state. (*Appeal of Moy*, 2019-OTA-057P.) Generally, to obtain relief from interest, taxpayers must qualify under R&TC sections 19104 or 21012.<sup>7</sup> (*Ibid.*) The abatement of interest for erroneous refunds is governed by R&TC section 19104(c). (R&TC, § 19368(a).)

Appellant does not specifically address interest, which accrued on the underpaid tax as well as on the erroneously refunded amount, beginning on March 6, 2022, 30 days from the date FTB's correspondence dated February 4, 2022. Concerning the underpaid tax of \$1,252, appellant does not allege, and the evidence does not show, that either statutory provision for interest abatement applies to the facts of this case. R&TC section 19104 does not apply here because appellant does not allege, and the evidence does not show, that the interest is attributable, in whole or in part, to any unreasonable error or delay by an FTB employee. R&TC section 21012 does not apply because FTB did not provide appellant with any requested written advice. Concerning the erroneously refunded amount of \$3,735, appellant does not allege, and the evidence does not show, that interest should be abated under R&TC section 19104(c) because of any unreasonable error or delay by an FTB employee. Therefore, FTB properly imposed interest and this panel has no basis to abate it.

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<sup>7</sup> Under R&TC section 19112, FTB may waive interest for any period for which FTB determines that an individual or fiduciary is unable to pay interest due to extreme financial hardship. Office of Tax Appeals does not have authority to review FTB's denial of a request to waive interest under R&TC section 19112. (*Appeal of Moy*, *supra.*)

HOLDING

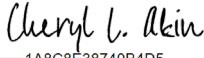
Appellant has not shown error in FTB’s proposed assessment of tax.

DISPOSITION

FTB’s action is sustained.

DocuSigned by:  
  
D17AFEDDCAAB045B  
Asaf Kletter  
Administrative Law Judge

We concur:

DocuSigned by:  
  
1A8C8E38740B4D5  
Cheryl L. Akin  
Administrative Law Judge

DocuSigned by:  
  
0C90542BE88D4E7  
Tommy Leung  
Administrative Law Judge

Date Issued: 10/16/2023