

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
J. MAAT

) OTA Case No. 20076337
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OPINION

Representing the Parties:

For Appellant: J. Maat

For Respondent: David Muradyan, Tax Counsel III

For Office of Tax Appeals: Michelle Huh, Tax Counsel

E. LAM Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, J. Maat (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$3,081, and applicable interest, for the 2015 tax 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. Whether appellant has shown error in FTB’s proposed assessment, which is based on a final federal determination.
2. Whether appellant has established entitlement to interest abatement.

FACTUAL FINDINGS

1. Appellant and his former spouse separated during the 2015 tax year.¹ Appellant and his former spouse timely filed a joint California resident income tax return (Form 540) for the 2015 tax year.

¹ Appellant’s former spouse is not a party to this appeal, and the IRS granted a ppellant’s former spouse partial innocent spouser relief. Appellant did not raise any innocent spouse relief arguments in this appeal.

2. Subsequently, FTB received information that the IRS increased appellant's and his former spouse's income by \$53,842 to include: \$43,667 of nonemployee compensation,² \$13,250 of taxable wages, \$10 of taxable dividends, and allow self-employment tax deductions of \$1,972 and \$1,113 for appellant and his former spouse, respectively. The federal determination became final. Neither appellant nor his former spouse informed FTB of the federal adjustments.
3. Thereafter, FTB issued to appellant and his former spouse a Notice of Proposed Assessment (NPA), which followed the federal adjustments by increasing their California taxable income by \$53,842. The NPA proposed to assess additional tax of \$3,081, plus applicable interest.
4. The NPA states that a protest must be filed with FTB by January 14, 2019, or the asserted amount owed will become due and payable. The NPA was sent to a Santa Clara, California address because FTB received information from the United States Postal Service (USPS) indicating that the Santa Clara, California address was appellant's current address in 2018.
5. Appellant did not file a protest of the NPA, but appellant's former spouse filed a timely protest with FTB.³ FTB issued a Notice of Action (NOA), affirming the NPA.
6. This timely appeal followed.

DISCUSSION

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

When the IRS makes a final federal determination, a taxpayer must concede the accuracy of the federal changes to a taxpayer's income or state where the changes are erroneous. (R&TC, § 18622(a).) It is well settled that a deficiency assessment based on federal adjustments to income is presumed to be correct, and a taxpayer bears the burden of proving that FTB's determinations are erroneous. (*Appeal of Valenti*, 2021-OTA-093P.) The applicable burden of proof is by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(c).) In the

² This amount is the total of \$27,917 from the payor Los Gatos Fence Company and \$15,750 from the payor Quakes FC.

³ Appellant's former spouse filed a timely protest of the NPA after the IRS granted her partial innocent spouse relief.

absence of credible, competent, and relevant evidence showing that FTB's determinations are incorrect, such determinations must be upheld. (*Appeal of Valenti, supra.*)

Here, FTB received information from the IRS indicating that it increased appellant and his former spouse's federal taxable income by \$53,842 for the 2015 tax year in a final federal determination. FTB obtained appellant's 2015 federal account information, which indicated that the IRS included \$43,667 of nonemployee compensation, \$13,250 of taxable wages, \$10 of taxable dividends, and allowed self-employment tax deductions of \$1,972 and \$1,113 for appellant and his former spouse, respectively. Thereafter, FTB issued its NPA that followed the federal adjustments. Therefore, FTB's proposed assessment is presumed correct, and appellant bears the burden of proving it to be incorrect by a preponderance of the evidence.

Appellant asserts that he does not understand how FTB calculated the proposed additional tax and that the proposed assessment is due to his employer's failure to provide him with a Form W-2 for approximately \$15,000 in earnings. Appellant argues that he should owe, at most, about \$1,500 in additional California taxes. However, appellant has not provided any evidence to support his contentions, and the evidence in the record does not indicate that FTB's determination is incorrect. Therefore, appellant has not satisfied his burden of proving that the final federal determination or FTB's proposed assessment is erroneous.

Appellant also asserts that he did not receive any notices regarding FTB's proposed assessment before the issuance of the NOA. However, any notice mailed to a taxpayer shall be sufficient if mailed to the taxpayer's last known address. (R&TC, § 18416(b).) As relevant to this appeal, R&TC section 18416(c) provides that the last known address shall be the address that appears on the taxpayer's last return filed with FTB, unless FTB has an address it has reason to believe is the most current address for the taxpayer. According to evidence in the record, FTB sent the NPA to appellant at the Santa Clara, California address because FTB received information from USPS indicating that the Santa Clara, California address is appellant's most current address in 2018. Furthermore, appellant does not contend, and evidence in the record does not show, that prior to the mailing of the NPA, appellant provided "clear and concise" notification of a different address to FTB. (See R&TC, § 18416(c).) Therefore, the NPA sent to the Santa Clara, California address is sufficient.

Finally, appellant indicated that he is interested in a payment plan to pay his additional tax liability. However, OTA has no statutory authority to settle a disputed tax liability, facilitate

a payment plan between appellant and FTB, or compromise a tax liability. (*Appeal of Robinson*, 2018-OTA-059P.) Rather, OTA's function is to determine the correct amount of a taxpayer's California income tax liability. (*Ibid.*)⁴

Issue 2: Whether appellant has established entitlement to interest abatement.

If any amount of tax is not paid by the due date, a taxpayer is required to pay interest for the period from the date the tax is due until the date the tax is paid. (R&TC, § 19101(a).) Interest is not a penalty but is merely compensation for a taxpayer's use of money after it should have been paid to the state. (*Appeal of Gorin*, 2020-OTA-018P.) 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*, 2018-OTA-159P.) 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 section 19104, 19112, or 21012. (*Appeal of Gorin*, *supra*.) OTA has jurisdiction to determine whether appellants are entitled to the abatement of interest under R&TC sections 19104 and 21012, but R&TC section 21012 does not apply because FTB did not provide appellant with any requested written advice.

Here, appellant contends that interest should be abated because he did not know of the proposed assessment prior to receiving the NOA. However, appellant has not established entitlement to interest abatement under R&TC section 19104 because appellant does not allege, and the evidence does not show, that the interest is attributable to any unreasonable error or delay by an officer or employee of FTB when performing a ministerial or managerial act. Therefore, appellant has not established any basis for interest abatement.

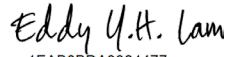
⁴ FTB may consider appellant's inability to pay under its payment plan or offer in compromise programs. (See <https://www.ftb.ca.gov/pay/if-you-cant-pay/index.html>.)

HOLDINGS

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

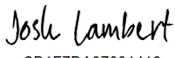
DISPOSITION

FTB’s action is sustained.

DocuSigned by:

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Eddy Y.H. Lam
 Administrative Law Judge

We concur:

DocuSigned by:

 CB4E7DA37831416...

Josh Lambert
 Administrative Law Judge

DocuSigned by:

 3AF5C32BB93B456...

Kenneth Gast
 Administrative Law Judge

Date Issued: 7/14/2023