

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: )  
L. DIETZ AND )  
N. DIETZ )  
\_\_\_\_\_ )  
OTA Case No. 221111817

**OPINION**

Representing the Parties:

For Appellants: L. Dietz and N. Dietz  
For Respondent: Brian Werking, Attorney

A. KLETTER, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, L. Dietz and N. Dietz (appellants) appeal actions by respondent Franchise Tax Board (FTB) proposing additional tax of \$4,348, an accuracy-related penalty (ARP) of \$869.60, plus interest for the 2017 tax year, and additional tax of \$2,773, an ARP of \$554.60, plus interest for the 2018 tax year.

Appellants waived the right to an oral hearing; therefore, the Office of Tax Appeals (OTA) decides this matter based on the written record.

**ISSUES**

1. Whether appellants have shown error in FTB’s proposed assessments of additional tax, which are based upon final federal determinations.
2. Whether the California ARPs were properly imposed for the 2017 and 2018 tax years.
3. Whether appellants are entitled to interest abatement.

**FACTUAL FINDINGS**

**2017 Tax Year**

1. Appellants timely filed their joint 2017 California income tax return.
2. FTB received information from the IRS that it had audited appellants’ 2017 tax year, determined that appellants failed to include wages of \$389 and other income of \$5,789;

and disallowed appellants' non-cash charitable contributions of \$48,050. Accordingly, the IRS increased appellants' taxable income by \$54,228. The IRS assessed additional tax based on its adjustments and imposed a federal ARP. On appeal, FTB provides appellants' 2017 Individual Master File (IMF), which shows that the IRS imposed a federal ARP due to negligence or disregard of rules and regulations. On September 28, 2020, the IRS's determination became a final federal determination for the 2017 tax year. Appellants did not report the federal changes to FTB.

3. On May 23, 2022, FTB issued appellants a Notice of Proposed Assessment (NPA) proposing to follow the IRS adjustments as applicable under California law and to increase appellants' 2017 California taxable income by \$54,228 to reflect the unreported income and disallowed non-cash charitable contributions. The NPA proposed to assess additional tax of \$4,348, a California ARP of \$869.60, and applicable interest.

#### 2018 Tax Year

4. Appellants timely filed their joint 2018 California income tax return.
5. FTB received information from the IRS that it had audited appellants' 2018 tax year and disallowed appellants' non-cash charitable contributions of \$38,500. The IRS also determined that appellants qualified for the standard deduction as the federal standard deduction of \$24,000 exceeded appellants' remaining itemized deductions totaling \$22,776. Accordingly, the IRS reduced appellants' taxable income by \$1,224 ( $\$24,000 - \$22,776 = \$1,224$ ). The IRS increased appellants' taxable income by \$37,276 ( $\$38,500 - \$1,224 = \$37,276$ ). The IRS assessed additional tax based on its adjustments and imposed a federal ARP. On appeal, FTB provides appellants' 2018 IMF, showing that the IRS imposed a federal ARP due to negligence or disregard of rules and regulations. On September 28, 2020, the IRS's determination became a final federal determination for the 2018 tax year. Appellants did not report the federal changes to FTB.
6. On June 1, 2022, FTB issued appellants an NPA proposing to follow the IRS adjustments as applicable under California law and to increase appellants' 2018 California taxable income by \$38,500 to reflect the disallowed non-cash contributions.<sup>1</sup> The NPA proposed to assess additional tax of \$2,773, a California ARP of \$554.60, and applicable interest.

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<sup>1</sup> Appellants' remaining California itemized deductions exceeded the California standard deduction. Thus, FTB did not revise appellants' taxable income to allow the California standard deduction.

Protest and Appeal of the 2017 and 2018 Tax Years

7. Appellants timely filed protests for the 2017 and 2018 tax years. FTB acknowledged the protests and affirmed its position in letters dated August 8, 2022. The August 8, 2022 letters explained that FTB's adjustments were based on the final federal determinations and requested information showing that the IRS income adjustments were reduced or cancelled, and stated that FTB cannot abate interest unless the law provides an exception.
8. Appellants did not reply, and on October 7, 2022, FTB issued appellants Notices of Action affirming the NPAs for the 2017 and 2018 tax years.
9. Appellants timely appealed. On appeal, appellants provide seven charitable contribution receipts totaling \$3,150 for the 2017 tax year and four charitable contribution receipts totaling \$10,150 for the 2018 tax year. On appeal, FTB provides appellants' 2017 and 2018 IMFs dated January 6, 2023, which show that as of that date, the federal ARPs have not been revised or abated.

DISCUSSIONIssue 1: Whether appellants have shown error in FTB's proposed assessments of additional tax, which are based upon final federal determinations.

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 a federal adjustment to income is presumed to be correct and a taxpayer bears the burden of proving that FTB's determination is erroneous. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509, 514; *Appeal of Valenti*, 2021-OTA-093P.) In the absence of credible, competent, and relevant evidence showing that FTB's determination is incorrect, it must be upheld. (*Appeal of Valenti, supra*.) Income tax deductions are a matter of legislative grace, and a taxpayer who claims a deduction has the burden of proving by competent evidence that they are entitled to that deduction. (*Appeal of Silver*, 2022-OTA-408P.) To meet that burden, a taxpayer must point to an applicable statute and show by credible evidence that the transactions in question come within its terms. (*Ibid.*) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof. (*Ibid.*)

Here, FTB received information from the IRS that appellants' federal taxable income was increased for the 2017 and 2018 tax years. FTB's corresponding adjustments are presumptively

correct. (*Todd v. McColgan, supra; Appeal of Valenti, supra.*) Appellants do not contest the final federal determination for the 2017 tax year increasing their taxable income for the unreported income. Appellants only contest the portion of the final federal determinations for the 2017 and 2018 tax years which disallow their respective non-cash charitable contributions of \$48,050 and \$38,500. Thus, OTA presumes that FTB's unreported income adjustment for the 2017 tax year is correct, and accordingly, discusses only the non-cash contributions below.

#### California and Federal Substantiation Requirements for Non-Cash Charitable Contributions

California incorporates IRC section 170, which generally provides an itemized deduction for charitable contributions. (R&TC, § 17201(a); IRC, § 170(a)(1).) Charitable contributions are defined as contributions or gifts made to a qualified donee made within the tax year. (See IRC, § 170(a), (c).) Generally, no deduction shall be allowed under IRC section 170(a) for any contribution of \$250 or more “unless the taxpayer substantiates the contribution by a contemporaneous written acknowledgment [CWA] of the contribution by the donee organization that meets the requirements of [IRC section 170(f)(8)(B)].” (IRC, § 170(f)(8)(A).) As relevant here, IRC section 170(f)(8)(B) provides that a CWA meets the requirements only if it includes a description (but not value) of any property other than cash contributed. (IRC, § 170(f)(8)(B)(i); Treas. Reg § 1.170A-13(f)(2)(i).)

Treasury Regulation section 1.170A-13(b) provides that a taxpayer making a charitable contribution of property other than money shall maintain for each contribution a receipt<sup>2</sup> from the donee showing the name of the donee, the date and location of the contribution, and a description of the property in detail reasonably sufficient under the circumstances. Although the fair market value is one of the circumstances to be taken into account in determining the amount of detail to be included on the receipt, such value need not be stated on the receipt. (Treas. Reg § 1.170A-13(b)(1)(iii).)

For non-cash charitable contributions in excess of \$500, taxpayers must satisfy more rigorous substantiation requirements in addition to providing the CWA. (IRC, § 170(f)(11); Treas. Reg. § 1.170A-16(c).) As relevant here, for individuals, no deduction shall be allowed under IRC section 170(a) for any contribution of property for which a deduction of more than \$500 is claimed, unless the donor also completes Form 8283. (IRC, § 170(f)(11)(B); Treas. Reg.

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<sup>2</sup> Substitution provisions may apply where obtaining a receipt is impracticable. (See Treas. Reg. § 1.170A-13(b)(1)(iii).)

§ 1.170A-16(c)(3), (d)(1)(iii).) Moreover, for contributions of property in excess of \$5,000, a qualified appraisal is also required. (IRC, § 170(f)(11)(C); Treas. Reg. § 1.170A-16(d)(ii).)

For purposes of calculating the threshold for the additional substantiation requirements, the donor must aggregate and treat contributions of “similar items of property” as one property. (IRC, § 170(f)(11)(F); Treas. Reg. § 1.170A-16(f)(5)(ii).) The phrase “similar items of property” means property of the same generic category or type, such as clothing or jewelry. (Treas. Reg. § 1.170A-13(c)(7)(iii).)

Appellants assert that the IRS did not provide an explanation for rejecting their donation receipts, and that no organization informed them that any additional substantiation was needed when claiming the charitable donations. On appeal, appellants provide seven charitable contribution receipts totaling \$3,150 for the 2017 tax year and four charitable contribution receipts totaling \$10,150 for the 2018 tax year, and request consideration of these receipts.

On appeal, FTB explains that it disallowed all of appellants’ charitable contributions for lack of substantiation because it determined that appellants’ deductions exceeded the \$500 or \$5,000 threshold for similar items of property, as applicable. For each tax year, FTB assigned appellants’ charitable contributions of property to general categories of similar items, which included accessories, art and collectables, clothing, household goods/items, cars and other motor vehicles, and “other.”<sup>3</sup>

For the 2017 tax year, FTB disallowed charitable deductions of \$48,050, consisting of \$1,500 for accessories, \$6,300 for art and collectibles, \$7,742 for clothing, and \$32,508 for household goods. FTB determined that the latter three categories exceeded the \$5,000 threshold, and accordingly, appellants were required to provide CWAs, a completed federal Form 8283, and a qualified appraisal; however, no qualified appraisal was provided. On appeal, appellants provided seven charitable contribution receipts for the 2017 tax year showing donations totaling \$3,150 made to the Vietnam Veterans of America. However, FTB compared appellants’ Form 8283 reporting to the provided receipts and found that the contemporaneous receipts do not

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<sup>3</sup> FTB determined these amounts by prorating the fair market value reported on appellants’ Form 8283 for various contribution dates within each tax year under appeal among FTB’s categorizations into general categories of appellants’ reported descriptions of the donated property. For example, FTB determined that a \$1,100 charitable donation reported for a date in 2018 described two general categories of property: accessories and clothing. Accordingly, FTB prorated the donation value among those two categories, \$367 to accessories and \$733 to clothing ( $\$367 + \$733 = \$1,100$ ). To determine the substantiation requirement for each category of property for each tax year under appeal, FTB aggregated the values that category of property in the applicable tax year.

support that the contributions were made as reported.<sup>4</sup> Thus, FTB determined that for the latter three categories of art and collectibles, clothing, and household goods, appellants failed to substantiate their charitable deductions and denied them.

Concerning the \$500 substantiation threshold, FTB determined that appellants' contributions of accessories exceeded the reporting threshold, and accordingly, appellants were required to provide CWAs and a completed Form 8283. On appeal, FTB reviewed appellants' Form 8283, which reported an April 2017 donation date for the accessories, and reviewed three charitable contribution receipts which appellants provided from April of 2017. However, FTB found no accessories reported on the receipts. Accordingly, FTB determined that appellants failed to substantiate their charitable deduction of accessories and denied the deduction.

For the 2018 tax year, FTB disallowed charitable deductions of \$38,500, consisting of \$367 for accessories, cars and other motor vehicles of \$2,000, clothing of \$1,733, "other" of \$667, art and collectibles of \$6,400, and household items of \$27,333. FTB determined that the latter two categories exceeded the \$5,000 threshold, and accordingly, appellants were required to provide CWAs, a completed federal Form 8283, and a qualified appraisal; however, no qualified appraisal was provided. On appeal, appellants provided four charitable contribution receipts for the 2018 tax year showing donations to the Amvets Service Foundation. However, FTB compared appellants' Form 8283 reporting to the provided receipts and found that the receipts did not support that the contributions were made as reported.<sup>5</sup> Thus, FTB determined that for the two categories of art and collectibles, and household items, appellants failed to substantiate their charitable deduction and denied them.

Concerning the \$500 substantiation threshold, FTB determined that appellants' contributions for the three categories of cars and other motor vehicles, clothing, and "other", exceeded the reporting threshold, and accordingly, appellants were required to provide CWAs

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<sup>4</sup> For example, appellants reported a donation of "memorabilia etc." to Amvets on May 15, 2017, and a donation of "Pictures, sports items, framed" to Amvets on August 15, 2017, for which FTB assigned a prorated value of \$6,300 to art and collectibles. However, appellants' receipts are not from that donee for the 2017 tax year. Further, the receipts they do provide do not describe art and collectibles donated on those dates, nor do they support donations of that amount.

<sup>5</sup> For example, appellants reported a donation for "sports items pictures autographed" to Goodwill on June 1, 2018, and a donation for "sports goods, pictures, helmets" to Vietnam Veterans of America on February 1, 2018, for which FTB assigned a prorated value of \$6,400 to art and collectibles. However, appellants do not provide receipts from either donee for the 2018 tax year. Further, the receipts they do provide do not describe art and collectibles donated on those dates nor do they support any donation for those amounts.

and a completed Form 8283. On appeal, appellants provided three charitable contribution receipts from April 2018. On appeal, FTB reviewed appellants' Form 8283 reporting for the three categories but found no relevant items reported on those dates to match the applicable receipts. Thus, FTB determined that appellants failed to substantiate charitable deductions for the three categories of cars and motor vehicles, clothing, and "other", and denied them.

Concerning the \$250 substantiation threshold, appellants' reported contributions of accessories were less than \$500; accordingly, appellants were required to provide a CWA for the March 15, 2018 donation of accessories they reported on Form 8283. However, no receipt was provided, and FTB denied the deduction.

The receipts provided by appellants support a finding that appellants donated a substantial amount of property to charitable organizations during the tax years on appeal. However, the evidence provided by appellants is insufficient to meet the rigorous substantiation requirements of the IRC and applicable treasury regulations. Where applicable, appellants have not provided qualified appraisals. Appellants have also not provided receipts for their claimed charitable contributions that are reasonably sufficient under the circumstances. Thus, appellants have failed to show error in FTB's determinations, or the federal determinations on which they were based. (*Appeal of Silver, supra.*)

Issue 2: Whether the California ARPs were properly imposed for the 2017 and 2018 tax years.

R&TC section 19164, which incorporates the provisions of IRC section 6662, provides for a California ARP of 20 percent of the portion of an underpayment of the tax that was required to be shown on the taxpayer's return. As relevant here, the penalty applies to the portion of the underpayment attributable to negligence or disregard of rules and regulations. (IRC, § 6662(b)(1), (c).) On appeal, FTB provides appellants' IMFs for the 2017 and 2018 tax years, which show that the IRS imposed the federal ARPs due to negligence or disregard of rules and regulations, and that the penalties have not been revised or abated as of January 6, 2023.

There are various exceptions to the imposition of the ARP for negligence. (Treas. Reg. § 1.6662-3(a).) In general, the ARP will not be imposed to the extent that a taxpayer has shown that a portion of the underpayment was due to reasonable cause and the taxpayer acted in good faith with respect to that portion of the underpayment. (IRC, § 6664(c)(1); Treas. Reg. § 1.6664-4.) Further, the ARP shall be reduced by the portion of the understatement attributable to the tax treatment of any item if the relevant facts affecting the item's tax treatment are

adequately disclosed and there is a reasonable basis for the tax treatment of such item. (IRC, § 6662(d)(2)(B)(ii).) The taxpayer bears the burden of proving any defenses to the imposition of the accuracy-related penalty. (*Recovery Group, Inc. v. Commissioner*, T.C. Memo. 2010-76.)

Here, FTB properly calculated the California ARPs for the 2017 and 2018 tax years.<sup>6</sup> On appeal, appellants request that the California ARPs should be waived, but have not met their burden to show that a specific exception applies. Rather, appellants make equitable arguments that they were unaware of the substantiation requirements for charitable donations, and that it was difficult to find noncash charitable receipts years after their 2017 and 2018 tax returns were due. However, the record shows no potential grounds for removing the California ARPs. Thus, OTA finds no error in FTB's imposition of the California ARPs for the 2017 and 2018 tax years.

Issue 3: Whether appellants are entitled to interest abatement.

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 compensation for appellants' use of money after it should have been paid to the state. (*Appeal of Moy*, 2019-OTA-057P.) There is no reasonable cause exception to the imposition of interest. (*Ibid.*) To obtain relief from interest, appellants must qualify under R&TC section 19104 or 21012.<sup>7</sup> (*Ibid.*) Appellants do not allege, and the evidence does not show that either statutory provision for interest abatement applies to the facts of this appeal. R&TC section 19104 does not apply here because appellants do 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.<sup>8</sup> R&TC section 21012 does not apply because FTB did not provide appellants with any requested written advice. Therefore, FTB properly imposed interest and OTA has no basis to abate it.

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<sup>6</sup> For the 2017 tax year, \$869.60 is 20 percent of the understated tax of \$4,348. For the 2018 tax year, \$544.60 is 20 percent of the understated tax of \$2,773.

<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. OTA does not have authority to review FTB's denial of a request to waive interest under R&TC section 19112. (*Appeal of Moy, supra.*)

<sup>8</sup> Appellants request interest abatement for the respective periods beginning on the date of their 2017 and 2018 California income tax return filings and ending on FTB's issuance of the 2017 and 2018 NPAs. However, FTB may only abate interest for a delay which occurred after FTB contacted the taxpayer in writing regarding the proposed assessment. (R&TC, § 19104(b)(1); *Appeal of Gorin*, 2020-OTA-018P.) On May 23, 2022 and June 1, 2022, FTB issued the 2017 and 2018 NPAs, which were its first written contacts with appellants regarding the proposed assessments for the tax years. Thus, no interest may be abated for the periods requested by appellants.




HOLDINGS

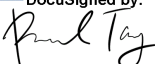
1. Appellants have not shown error in FTB’s proposed assessments of additional tax, which are based upon final federal determinations.
2. The California ARPs were properly imposed for the 2017 and 2018 tax years.
3. Appellants are not entitled to interest abatement.

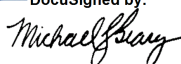
DISPOSITION

FTB’s actions are sustained.

DocuSigned by:  
  
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Asaf Kletter  
Administrative Law Judge

We concur:

DocuSigned by:  
  
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Richard Tay  
Administrative Law Judge

DocuSigned by:  
  
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Michael F. Geary  
Administrative Law Judge

Date Issued: 12/20/2023