

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
J. KASSAB) OTA Case No. 220510375
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OPINION

Representing the Parties:

For Appellant: J. Kassab
For Respondent: Paige Chang, Tax Counsel
For Office of Tax Appeals: Neha Garner, Tax Counsel III

S. BROWN, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. Kassab (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$2,700¹ for the 2016 tax year.

Appellant waived the right to an oral hearing; therefore, 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 a federal adjustment, for the 2016 tax year.
2. Whether appellant has established grounds to abate the collection cost recovery fee.
3. Whether appellant is entitled to interest abatement.

¹ Appellant’s amended tax return does not state a refund amount. Although appellant’s Request for Appeal filed with the Office of Tax Appeals (OTA) lists the claimed refund amount as \$2,700.00, appellant has paid less than that amount to FTB for the 2016 tax year. FTB treated the amended return as a claim for refund of \$973.98, which is the total of two payments appellant made on her 2016 tax year account after receiving balance due notices from FTB. Although appellant does not appear to specifically dispute the collection cost recovery fee of \$310.00 and interest totaling \$99.98, OTA infers from the claim amount that appellant includes those amounts as part of the claim for refund.

FACTUAL FINDINGS

1. On April 15, 2017, appellant timely filed a 2016 California income tax return reporting total tax of \$713, which appellant remitted with the return.
2. Subsequently, the IRS adjusted appellant's federal income tax return, increasing taxable income by \$9,347 due to unreported gambling income.
3. Based on this information, FTB sent appellant a Notice of Proposed Assessment (NPA) on February 28, 2020, which proposed assessing additional tax of \$558, plus interest.
4. On August 11, 2020, FTB issued to appellant a State Income Tax Balance Due Notice. On October 21, 2020, FTB issued to appellant an Income Tax Due Notice. On November 6, 2020, FTB received from appellant an amended 2016 California income tax return, stating the reason for filing the amended return as appellant "forgot to include all the w2gs [*sic*] and losses." The amended return reports increased amounts for both California adjusted gross income and claimed deductions, as compared to the original tax return, but reporting the same amount of tax (\$713) as on the original return.
5. On December 1, 2020, FTB issued a Final Notice Before Levy and Lien, showing a balance due of \$646.99 (based on tax due of \$558.00 plus interest of \$88.99), and stating that if the balance is not paid in full within 30 days, FTB may take collection action, including a collection fee. Subsequently, FTB received payments of \$718.95 on June 4, 2021, and \$255.03 on September 1, 2021 (totaling \$973.98). FTB's Tax Year Detail for appellant's 2016 account show imposition of a collection fee of \$310.00 and interest totaling \$99.98.
6. On October 15, 2021, FTB received correspondence from appellant which included a copy of appellant's previously filed amended tax return. FTB treated the amended return as a claim for refund of \$973.98.
7. In correspondence dated March 1, 2022, FTB notified appellant it had received her amended tax return and treated it as a claim for refund, since the 2016 tax year liability had already been paid in full. FTB's letter states that since information from the IRS does not show that the federal assessment was canceled or reduced, the NPA is correct and appellant's claim for refund should be denied. The letter also states that FTB was unable to accept appellant's amended return as filed because, based on information from the IRS, appellant claimed more itemized deductions than were allowable.

8. FTB did not receive a reply; it then issued a Claim for Refund Denied letter dated April 15, 2022.
9. Appellant filed this timely appeal with the Office of Tax Appeals (OTA).

DISCUSSION

Issue 1: Whether appellant has shown error in FTB's proposed assessment, which is based on a federal adjustment, for the 2016 tax year.

When the IRS changes or corrects a taxpayer's federal tax return, the taxpayer must either concede the accuracy of the federal determination or state how the determination is erroneous. (R&TC, § 18622(a).) A deficiency assessment based on a federal audit report is presumptively correct and a taxpayer bears the burden of proving that the determination 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 insufficient to satisfy a taxpayer's burden of proof. (*Appeal of Gorin*, *supra*.)

Here, appellant's sole contention on appeal is that she lost the gambling income she had received. Appellant has not provided any evidence to substantiate gambling losses or otherwise show that FTB's proposed assessment should be revised. Appellant's federal account transcript for the 2016 tax year does not show evidence of error in FTB's determination, and OTA finds no errors. Accordingly, appellant has not established error in FTB's proposed assessment for the 2016 tax year.

Issue 2: Whether appellant has established grounds to abate the collection cost recovery fee.

R&TC section 19254(a)(1) requires FTB to impose a collection cost recovery fee when FTB notifies a taxpayer that the continued failure to pay an amount due may result in the imposition of the fee, and the taxpayer fails to timely pay the amount due in response to the notice. The amount of the collection cost recovery fee is adjusted annually to reflect annual enforcement costs. There is no reasonable cause defense to the imposition of the collection cost recovery fee ; thus, OTA's inquiry is limited to determining whether FTB complied with the statutory notice requirements for imposing the fee. (*Appeal of Auburn Old Town Gallery, LLC*, 2019-OTA-319P.)

Here, FTB mailed appellant the December 1, 2020 Final Notice Before Levy and Lien, informing appellant that the failure to pay the liability within 30 days of the notice may result in

collection action and the imposition of a collection fee. Since appellant failed to pay the liability after receiving that notice, the fee was properly imposed under R&TC section 19254(a)(1). OTA has no authority to abate or modify this fee. Therefore, appellant has not established grounds to abate the fee, and FTB's imposition of the fee is sustained.

Issue 3: Whether appellant is entitled to interest abatement.

Imposing interest is mandatory, and FTB cannot abate interest except where authorized by law. (R&TC, § 19101; *Appeal of Balch*, 2018-OTA-159P.) Interest is not a penalty; it is compensation for the use of money. (*Appeal of Balch, supra.*) Interest accrues on a deficiency assessment regardless of the reason for the assessment. (*Ibid.*) Generally, to obtain relief from interest, taxpayers must qualify under R&TC section 19104, 19112, or 21012.² (*Ibid.*) Appellant does not allege that any of the three statutory provisions for interest abatement apply here, and OTA concludes based on the evidence in the record that none of these statutory provisions apply. Therefore, FTB properly imposed interest, and OTA has no basis to abate it.

² Under R&TC section 19104, FTB is authorized to abate or refund interest if there has been an unreasonable error or delay in the performance of a ministerial or managerial act by an FTB employee. Under R&TC section 19112, FTB may waive interest for any period for which FTB determines that an individual has extreme financial hardship. OTA does not have authority to review extreme financial hardship determinations. (See *Appeal of Moy*, 2019-OTA-057P.) Under R&TC section 21012, a person may be relieved from interest if that person reasonably relies on written advice from FTB in response to a written request.

HOLDINGS

1. Appellant has failed to show error in FTB’s proposed assessment, which is based on a federal adjustment, for the 2016 tax year.
2. Appellant has not established grounds to abate the collection cost recovery fee.
3. Appellant is not entitled to interest abatement.

DISPOSITION

FTB’s action in denying appellant’s claim for refund is sustained.

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Suzanne B. Brown
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 Suzanne B. Brown
 Administrative Law Judge

We concur:

DocuSigned by:
Josh Aldrich
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 Josh Aldrich
 Administrative Law Judge

DocuSigned by:
John O Johnson
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 John O. Johnson
 Administrative Law Judge

Date Issued: 8/15/2023