

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 21067928
C. YATES)
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OPINION

Representing the Parties:

For Appellant: C. Yates

For Respondent: David Muradyan, Attorney

For Office of Tax Appeals: Tom Hudson, Attorney

K. WILSON, Hearing Officer: Pursuant to Revenue and Taxation Code (R&TC) section 19045, C. Yates (appellant) appeals the action of the respondent Franchise Tax Board (FTB) in proposing to assess additional tax of \$3,179 and applicable interest for the 2016 tax year. Appellant waived his right to an oral hearing, so this matter has been decided on the basis of the written record.

ISSUES

1. Whether appellant has shown any error in the proposed assessment, which was based on a final federal determination.
2. Whether interest should be abated.

FACTUAL FINDINGS

1. Appellant filed his 2016 California tax return on April 15, 2017.
2. The IRS subsequently audited appellant’s federal tax return for 2016 and made various adjustments. In relevant parts, the IRS disallowed \$5,226 in Schedule C Other Expenses and \$29,392 in Schedule C Car and Truck Expenses. Appellant did not report the federal adjustments to FTB, but the IRS informed FTB of the audit adjustments on October 4, 2019.

3. On November 18, 2020, FTB issued a Notice of Proposed Assessment (NPA) proposing additional tax of \$3,179, plus interest.¹
4. Appellant protested the NPA, explaining that he was a driver for Uber and Lyft and that the work-related mileage shown on his tax return was accurate and that he had records. Appellant stated that he could also obtain records from Uber and Lyft “but it will take time, they do not make it easy...”
5. FTB responded on February 25, 2021, stating that the NPA was based on IRS information. FTB stated that the IRS assessment had not been canceled or adjusted, so they maintained that the NPA was correct. FTB offered appellant an opportunity to provide a copy of his federal “Account Transcript” that shows a federal adjusted gross income (AGI) amount that is less than the revised amount reported to FTB or any new information that supports appellant’s position. The letter stated that if the appellant did not reply within 30 days, then FTB would affirm the NPA.
6. When there was no response, FTB issued a Notice of Action on May 3, 2021, that affirmed the NPA.
7. Appellant filed this timely appeal.

DISCUSSION

Issue 1: Whether appellant has shown any error in the proposed assessment, which was based on a final federal determination.

R&TC section 18622(a) provides that a taxpayer shall either concede the accuracy of a final federal determination or state wherein it is erroneous. If the IRS makes a change or correction to “any item required to be shown on a federal tax return, including any gross income, deduction, penalty, credit, or tax for any year,” the taxpayer must report the federal change to FTB within six months after the date it becomes final. (*Ibid.*) A deficiency assessment based on federal adjustments to income is presumptively correct and the taxpayer bears the burden of proving that the determination is erroneous. (*Appeal of Dillahunt*, 2024-OTA-024P.) In the absence of credible evidence showing that FTB’s determination is incorrect, it must be upheld.

¹ Following the IRS determination, the NPA disallowed \$5,226 in Schedule C Other Expense, \$29,392 in Schedule C Car and Truck Expenses and disallowed the nonrefundable renter’s credit based on the increased AGI, but it also allowed a credit of \$641 for the increased one half of self-employment tax.

(*Appeal of Chen and Chi*, 2020-OTA-021P.) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof with respect to a deficiency assessment based on a federal action.

(*Appeal of Dillahunt*, *supra*.)

In this appeal, FTB has shown that its proposed assessment was based on a final federal determination after an IRS audit. FTB's determinations are presumed correct and the taxpayer has the burden of establishing error in FTB's determinations. (*Appeal of Davis*, 2020-OTA-182P.) Appellant has not shown any error in the proposed assessment or in the federal determination on which it was based. Appellant states that he provided mileage documentation to the IRS, but the IRS did not accept it. Appellant's 2016 federal account transcript shows that the IRS did not reduce or cancel the federal assessment. In addition, appellant has not provided any documentation or other evidence, and the Office of Tax Appeals (OTA) has no basis to evaluate appellant's work-related mileage to determine if the IRS adjustments were erroneous. Thus, appellant has not met his burden of proving error in FTB's proposed assessment, or in the federal determination upon which FTB based its proposed assessment. There is no evidentiary basis to reverse the proposed assessment, therefore, it must be upheld.

Issue 2: Whether interest should be abated.

The imposition of interest on a tax deficiency is mandatory, and it accrues regardless of the reason for the assessment. (R&TC, § 19101(a); *Appeal of Balch*, 2018-OTA-159P.) There is no reasonable cause exception to the imposition of interest. (*Appeal of Gorin*, 2020-OTA-018P.) Interest is not a penalty, but is compensation for a taxpayer's use of money which should have been paid to the state. (*Ibid.*) To obtain interest relief, appellant must qualify under R&TC section 19104 (pertaining to an unreasonable error or delay by FTB in the performance of a ministerial or managerial act), section 19112 (pertaining to extreme financial hardship caused by significant disability or other catastrophic circumstance),² or section 21012 (pertaining to reasonable reliance on FTB's written advice). Appellant did not allege, and the record does not show that any of these waiver provisions might be applicable here. Therefore, there is no legal basis for interest abatement.

² OTA does not have the legal authority to review FTB's denial of a waiver of interest based on extreme financial hardship. (*Appeal of Moy*, 2019-OTA-057P.)

HOLDINGS

1. Appellant has not shown any error in the proposed assessment, which was based on a final federal determination.
2. Interest should not be abated.

DISPOSITION

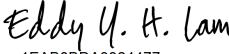
FTB’s proposed assessment is sustained.

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 Kim Wilson
 Hearing Officer

We concur:

DocuSigned by:

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 Eddy Y.H. Lam
 Administrative Law Judge

DocuSigned by:

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 Tommy Leung
 Administrative Law Judge

Date Issued: 7/16/2024