

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
R. GAULT, JR.)
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OTA Case No. 230513251

OPINION

Representing the Parties:

For Appellant: Darol Smith, Representative

For Respondent: Eric A. Yadao, Attorney

J. ALDRICH, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, R. Gault, Jr. (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$6,774 and applicable interest for the 2017 tax year.¹

Appellant waived the right to an oral hearing; therefore, the matter is being decided by an Office of Tax Appeals (OTA) panel based on the written record.

ISSUE

Whether FTB’s proposed assessment is barred by the statute of limitations.

FACTUAL FINDINGS

1. On April 15, 2018, appellant filed his 2017 California Resident Income Tax Return (return) with married filing jointly filing status.
2. On May 21, 2018, FTB accepted appellant’s return as filed and issued a refund.
3. FTB examined appellant’s return and determined that there were errors.
4. FTB sent appellant a Notice of Proposed Assessment (NPA) dated April 28, 2021, which increased appellant’s 2017 taxable income, and proposed additional tax of \$6,774, plus interest.

¹ Appellant appealed the amount of \$8,311.17, which is composed of additional tax of \$6,774 plus interest of \$1,537.17.

5. Appellant protested the NPA.²
6. FTB acknowledged the protest letter.
7. FTB affirmed its position via a General Correspondence letter dated September 13, 2022.
8. On October 24, 2022, FTB received an additional protest letter wherein appellant made similar arguments in support of his position.
9. FTB responded with a General Correspondence letter dated February 17, 2023, that reaffirmed its position. Appellant did not timely respond to the February 17, 2023 letter.
10. FTB issued a Notice of Action dated April 7, 2023.
11. Appellant timely appealed to OTA.

DISCUSSION

In general, a proposed deficiency assessment shall be mailed to the taxpayer within four years after the return was filed. (R&TC, § 19057(a).) No deficiency assessment shall be assessed or collected with respect to the year for which the return was filed unless the notice is mailed within the four-year period, or the period otherwise provided. (*Ibid.*)

Appellant argues that FTB is barred from assessing or collecting the deficiency because the tax was assessed on April 7, 2023. In support, appellant argues that “proposed” is defined as an idea or plan for consideration or discussion, and the tax was not final until it was assessed.

Here, the applicable four-year statute of limitations for deficiency assessments spans the period of April 15, 2018, which is the date that appellant filed his return, to April 15, 2022. FTB’s deficiency assessment is timely because the NPA was issued on April 28, 2021, which is within the applicable four-year period. Appellant’s focus on the fact that the notice is described as a proposed assessment is misplaced. The statutory framework unequivocally contemplates proposed assessments, not final determinations. In sum, OTA finds that FTB’s NPA was issued in a timely manner.

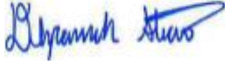
² Appellant’s arguments at protest focused on his retirement at the end of 2016 and his relocation to Arizona for all of 2017. Appellant alleges his employer erred in withholding taxes on vacation and sick pay in January 2017, and that the only income that was taxable in California on his 2017 joint return was income earned by his now-former wife. On appeal, however, appellant has not raised these arguments, and solely argues that FTB’s action is barred by the statute of limitations.

HOLDING


FTB’s proposed assessment is not barred by the statute of limitations.

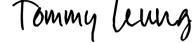
DISPOSITION

FTB’s action is sustained in full.

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Josh Aldrich
Administrative Law Judge

We concur:

DocuSigned by:

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John O. Johnson
Administrative Law Judge

DocuSigned by:

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Tommy Leung
Administrative Law Judge

Date Issued: 11/1/2024