

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of:	)	OTA Case No. 230112482
<b>Y. GARCIA</b>	)	
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**OPINION**

Representing the Parties:

For Appellant:	Y. Garcia
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For Respondent:	Paige Chang, Attorney
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S. ELSOM, Hearing Officer: Pursuant to Revenue and Taxation Code (R&TC) section 19045, Y. Garcia (appellant) appeals an action by the Franchise Tax Board (respondent) proposing additional tax of \$1,657, and applicable interest for the 2018 tax year.

Appellant waived the right to an oral hearing; therefore, the matter was submitted to the Office of Tax Appeals (OTA) on the written record pursuant to California Code of Regulations, title 18, section 30209(a).

**ISSUES**

1. Whether appellant has demonstrated error in respondent's proposed assessment.
2. Whether appellant has demonstrated a basis to abate interest.

**FACTUAL FINDINGS**

1. Appellant timely filed a California resident income tax return for tax year 2018 claiming a refund of \$2,134. Respondent issued the claimed refund amount to appellant.
2. Subsequently, based on a review of appellant's return and a Form W-2 issued to appellant, respondent discovered that appellant erroneously subtracted wages of \$48,800 from her California taxable income on line 1 of her Schedule CA, California Adjustments - Residents.

3. As a result, respondent issued a Notice of Proposed Assessment (NPA) to appellant for the 2018 tax year, reflecting proposed additional tax of \$1,657, plus applicable interest.
4. On December 29, 2022, respondent issued a Notice of Action (NOA) affirming the NPA, explaining that respondent disallowed the Schedule CA subtraction of \$48,800. The NOA also stated that interest had been suspended pursuant to R&TC section 19116, but would begin to accrue 15 days after the NPA was issued.
5. This timely appeal followed.

### DISCUSSION

#### Issue 1: Whether appellant has demonstrated error in respondent's proposed assessment.

Respondent's determination of tax is presumed to be correct, and a taxpayer has the burden of proving error. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Ibid.*) Respondent's determinations cannot be successfully rebutted when the taxpayer fails to provide credible, competent, and relevant evidence as to the issues in dispute. (*Ibid.*)

Here, appellant does not dispute respondent's proposed assessment. Appellant states that she may have "accidentally wrote [her] wage in the wrong box" on the TurboTax software which caused an erroneous subtraction on appellant's California return. However, appellant argues that she cannot pay the tax liability because of financial hardship and requests a compromise or settlement. Appellant also appears to contend that she is not a legal person subject to income tax laws, stating, "[I] *do not consent* to any taxation from any foreign jurisdiction." (Original italics.)

Appellant does not argue that respondent's adjustment is incorrect. As a result, appellant has not satisfied her burden of proof to show error in respondent's adjustment. (*Appeal of GEF Operating, Inc.*, *supra.*) Furthermore, OTA lacks authority to make discretionary adjustments to the amount of a tax assessment based on a taxpayer's ability to pay or willingness to settle. (*Appeal of Robinson*, 2018-OTA-059P.) Therefore, OTA has no legal basis upon which to make any adjustments to the amount of respondent's proposed assessment due to financial hardship.

Finally, courts have consistently rejected arguments as frivolous where an individual taxpayer asserts that she is either not a legal person or is not subject to income tax laws.<sup>1</sup> In accordance with long standing legal precedent, OTA considers appellant's similar arguments above to be frivolous.<sup>2</sup>

Issue 2: Whether appellant has demonstrated a basis to abate interest

Interest must be assessed from the date a tax payment is due through the date that it is paid. (R&TC, § 19101.) Interest is not a penalty; it is compensation for the use of money. (*Appeal of Balch*, 2018-OTA-159P.) Imposing interest is mandatory, and respondent cannot abate interest except where authorized by law. (R&TC, § 19101; *Appeal of Balch*, *supra*.) Generally, to obtain relief from interest, taxpayers must qualify under R&TC sections 19104, 21012 or 19112.<sup>3</sup> (*Appeal of Balch*, *supra*.)

Appellant does not allege that the statutory provisions for interest abatement referenced above apply to the facts of this case, and OTA concludes based on the evidence in the record that none of these statutory provisions apply. Therefore, respondent properly imposed interest and OTA has no basis to abate it.

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<sup>1</sup> *U.S. v. Studley*, 783 F.2d 934, 937, fn.3 (9th Cir. 1986) – in affirming a conviction for failure to file income tax returns – the Ninth Circuit rejected the taxpayer's contention that she was not subject to federal tax laws because she was “an absolute, freeborn[,] and natural individual” and noted that “this argument has been consistently and thoroughly rejected by every branch of the government for decades.” Appellant's argument is the same as or is similar to positions that the IRS has identified as frivolous. (See *The Truth About Frivolous Tax Arguments* (Mar. 2022) at [www.irs.gov/privacy-disclosure/the-truth-about-frivolous-tax-arguments-introduction](http://www.irs.gov/privacy-disclosure/the-truth-about-frivolous-tax-arguments-introduction).)

<sup>2</sup> OTA has the statutory authority to impose a penalty of up to \$5,000 if it finds that an appeal has been instituted or maintained primarily for delay or that a taxpayer's position in the appeal is frivolous or groundless. (R&TC, § 19714; Cal. Code Regs., tit. 18, § 30217(a).) Although OTA does not impose the penalty in this appeal, appellant's positions and conduct suggest that a penalty may be warranted in the future if appellant files another appeal with OTA raising the same or similar issues.

<sup>3</sup> Under R&TC section 19104, respondent 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 employee of respondent. Under R&TC section 21012, an individual may be relieved from interest if that person reasonably relies on respondent's written advice in response to a written request. Under R&TC section 19112, respondent may waive interest for any period for which respondent determines that an individual has extreme financial hardship. However, OTA does not have authority to review extreme financial hardship determinations under R&TC section 19112. (*Appeal of Moy*, 2019-OTA-057P.)

HOLDINGS


1. Appellant has not demonstrated error in respondent's proposed assessment.
2. Appellant has not demonstrated a basis to abate interest.


DISPOSITION

Respondent's action is sustained.

Signed by:  
  
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Seth Elsom  
Hearing Officer

We concur:

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Sheriene Ridenour  
Administrative Law Judge

DocuSigned by:  
  
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Steven Kim  
Administrative Law Judge

Date Issued: 11/26/2024