

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)	OTA Case No. 240616585
L. SCOTT¹)	
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)	

OPINION

Representing the Parties:

For Appellant:	L. Scott
For Respondent:	Amelia Breen, Attorney

A. VASSIGH, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, L. Scott (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$3,146, and applicable interest for the 2019 tax year.

Appellant elected to have this appeal determined pursuant to the procedures of the Small Case Program. Those procedures require the assignment of a single panel member. (Cal. Code Regs., tit. 18, § 30209.05(b).)

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 FTB's proposed assessment of additional tax, which is based on a federal determination, is barred by the statute of limitations; and if not, whether appellant has established error in the proposed assessment.
2. Whether appellant has established a basis to abate interest.

¹ FTB issued a Notice of Action to both appellant and his spouse. However, only appellant submitted an appeal with the Office of Tax Appeals; therefore, "appellant" will refer only to L. Scott for purposes of this appeal.

FACTUAL FINDINGS

1. Appellant filed a joint 2019 California tax return on March 30, 2020, reporting \$0 in total tax and \$766 in withholding payments, resulting in a claimed refund of \$766.
2. FTB obtained information showing that the IRS adjusted appellant's 2019 federal tax return based on \$74,172 in unreported taxable pension income.
3. Appellant did not report the federal adjustment to FTB.
4. On June 13, 2023, FTB mailed to appellant a Notice of Proposed Assessment (NPA) that followed the federal adjustment and increased appellant's California taxable income by \$74,172. The NPA proposed tax of \$3,146 and applicable interest.
5. FTB then issued a position letter explaining that the NPA was based on information provided to FTB by the IRS. Appellant and his wife protested the NPA and FTB issued them a letter stating that its position was unchanged.
6. On May 28, 2024, FTB issued appellant a Notice of Action (NOA) affirming the NPA.
7. Appellant timely filed this appeal.

DISCUSSION

Issue 1: Whether FTB's proposed assessment of additional tax, which is based on a federal determination, is barred by the statute of limitations; and if not, whether appellant has established error in the proposed assessment.

Statute of Limitations

In general, FTB must mail to a taxpayer an NPA within four years after the date when the taxpayer filed his or her California return.² (R&TC, § 19057(a).) Returns filed before the original due date of the tax return are deemed as filed on the original due date. (R&TC, § 19066.) Appellant states that he is appealing the proposed assessment in part "because of the long time period receiving information." Appellant is apparently arguing that FTB failed to timely mail to him the NPA. Since appellant filed his 2019 tax return on March 30, 2020, the return is deemed filed on the original due date of April 15, 2020. Thus, under the law, the last date when FTB could have mailed an NPA to appellant for tax year 2019 was April 15, 2024. Because FTB mailed its NPA to appellant on June 13, 2023, FTB's NPA was timely mailed within the statute of limitations. The proposed assessment is therefore not barred by the statute of limitations.

² There is a special statute of limitations when federal waivers are involved. (R&TC § 19065.) There is no information in the appeal record, however, that indicates appellant signed a federal waiver.

Proposed Assessment

R&TC section 18622(a) provides that a taxpayer is required to report to FTB a federal determination within six months after it becomes final and shall either concede the accuracy of the federal determination or state wherein it is erroneous. It is well settled that a deficiency assessment based on a federal adjustment to income is presumed to be correct and taxpayers bear the burden of proving that FTB's determination is erroneous. (*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. (*Ibid.*)

Appellant has not provided an argument or facts to contest the proposed assessment, which is based on a federal determination that appellant did not include pension income of \$74,172 in his reported federal taxable income. Appellant thus does not appear to dispute the proposed assessment itself. Accordingly, appellant has not demonstrated error in FTB's proposed assessment.

Issue 2: Whether appellant has established a basis to abate interest.

Taxes are due and payable as of the original due date of a taxpayer's return without regard to extensions. (R&TC, § 19001.) If taxes are not paid when due, the imposition of interest is mandatory and accrues on a tax deficiency regardless of the reason for the underpayment. (R&TC, § 19101(a); *Appeal of Balch*, 2018-OTA-159P.) Interest is not a penalty but is compensation for the taxpayer's use of money that should have been paid to the state, and it can only be abated in certain limited situations when authorized by law. (*Appeal of Moy*, 2019-OTA-057P.) There is no reasonable cause exception to the imposition of interest. (*Ibid.*)

Appellant appears to contend that he is entitled to interest abatement because FTB did not issue its NPA until June 13, 2023. FTB mailed appellant the NPA less than three years and three months after he filed his 2019 return on March 20, 2020. As discussed above, FTB timely mailed the NPA within the four-year statute of limitations. (R&TC, § 19057.) The NOA indicates that FTB charged accrued interest from July 15, 2020,³ to May 5, 2023, it suspended interest from May 6, 2023, through June 27, 2023, and it resumed charging accrued interest on June 28, 2023. (R&TC, § 19116(b)(2) & (e).)

³ Interest began to accrue on July 15, 2020, because FTB postponed individuals' filing and payment deadlines for tax year 2019 from April 15, 2020, to July 15, 2020 due to COVID-19. <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2020-3-state-postpones-tax-deadlines-until-july-15-due-to-the-covid-19-pandemic.html>


To obtain interest relief, appellant must qualify under one of the following statutes: R&TC section 19104 (pertaining to unreasonable error or delay by FTB in the performance of a ministerial or managerial act), R&TC section 19112 (pertaining to extreme financial hardship caused by significant disability or other catastrophic circumstance),⁴ or R&TC section 21012 (pertaining to reasonable reliance on the written advice of FTB). (*Appeal of Moy, supra.*) Appellant does not allege, and the record does not indicate that any of these statutory provisions apply. Therefore, there is no legal basis for interest abatement.

HOLDINGS

1. FTB's proposed assessment of additional tax is not barred by the statute of limitations; and appellant has not established error in the proposed assessment.
2. Appellant has not established a basis to abate interest.

DISPOSITION

FTB's action is sustained.

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Amanda Vassigh
Administrative Law Judge

Date Issued: 4/2/2025

⁴ OTA does not have the legal authority to review or overturn FTB's denial of a waiver of interest based on extreme financial hardship. (*Appeal of Moy, supra.*)