

- reported identical amounts of gain recognized from the sale of the principal residence on Schedule D and for the mortgage interest deduction on Schedule A.
2. Respondent subsequently received information from the IRS indicating that on September 13, 2021, the IRS made a determination to reduce appellant's Schedule A mortgage interest deduction by \$77,785 and increase appellant's rent or royalty income by \$68, resulting in a corresponding increase to appellant's taxable income of \$77,853, and the assessment of additional tax.
 3. Based upon the IRS's determination, respondent sent appellant a Notice of Proposed Assessment (NPA) on April 25, 2023, proposing to increase her taxable income by \$77,853 and assess additional tax of \$6,380, plus applicable interest.
 4. Appellant protested the NPA on May 11, 2023.
 5. Respondent explained to appellant in a letter dated February 7, 2024, that the NPA was based on the IRS's disallowance of a \$77,785 deduction appellant had taken for home mortgage interest.
 6. Respondent subsequently issued a Notice of Action on April 22, 2024, to affirm the NPA.
 7. This timely appeal followed.

DISCUSSION

Issue 1: Whether appellant has established error in respondent's assessment, which is based on a 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. Although respondent may base its proposed assessment on a final federal determination to the extent applicable under California law, it is not bound to do so and can conduct an independent investigation. (*Appeal of Black*, 2023-OTA-023P.) Likewise, appellant can establish respondent's proposed assessment based on a final federal determination is incorrect. (*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 Dillahunty*, 2024-OTA-024P.) In the absence of credible, competent, and relevant evidence showing that respondent's determination is incorrect, it must be upheld. (*Appeal of Black, supra.*) 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 Dillahunty, supra.*)

Here, respondent proposed assessments to reduce appellant's Schedule A mortgage interest deduction and increase rent or royalty income in accordance with the IRS's federal

determination. Thus, respondent's deficiency assessment is presumptively correct, and appellant bears the burden of proving it is erroneous. (*Appeal of Dillahunty, supra.*)

Appellant does not provide argument or evidence specifically addressing respondent's reduction of appellant's interest deduction or the increase in rent or royalty income. Instead, appellant argues that the gain from the sale of her principal residence did not need to be reported. In her request for appeal to OTA, appellant provided her protest letter to respondent, which included the following statements, "The house sold for a total of \$355,000"; "I paid off the mortgage loan to The Dept of Housing and Urban Development at a total of \$230,726.30"; "[t]he balance that was paid to me for the sale of the home was \$100,252.93"; and "[b]ased on [respondent's] website[,] it states individuals do not have to report the sale of their home if the following apply: [y]our gain from the sale was less than \$250,000 . . ." However, appellant already reported an IRC section 121 gain exclusion of \$250,000 in connection with the sale of her principal residence and neither the IRS nor respondent proposed to assess a deficiency with respect to the gain reported by appellant. In light of the fact that appellant has not provided any argument related to the Schedule A mortgage interest deductions and increased rent or royalty income, appellant has not satisfied her burden of proof to establish error in respondent's proposed assessment.² Therefore, OTA upholds respondent's deficiency assessment.

Issue 2: Whether appellant has established a legal basis for the abatement of interest.

Interest must be assessed from the date a tax payment is due through the date that it is paid. (R&TC, § 19101(a).) Imposing interest is mandatory; it is not a penalty, but it is compensation for the taxpayer's use of money after it should have been paid to the state. (*Appeal of Moy, 2019-OTA-057P.*) There is no reasonable cause exception to the imposition of interest. (*Ibid.*) To obtain interest abatement, a taxpayer must qualify under the waiver provisions of R&TC section 19104 or 21012.³ R&TC section 19104 provides for interest abatement when the interest is attributable in whole or in part to any unreasonable error or

² On CA Form 540 Schedule D, appellant reported proceeds realized from the sale of her principal residence of \$355,000, an adjusted basis of \$60, and a gain of \$354,940. (See IRC, § 1001(a); R&TC, § 18031.) Appellant then reported an IRC section 121 exclusion of \$250,000, for a reported recognized gain of \$104,940 (\$354,940 - \$250,000). To the extent that appellant believes that she incorrectly reported her gain, appellant may file an amended return with respondent to correct errors in reported sales proceeds realized or adjusted basis and may claim a refund. (See R&TC, § 19306(a) [the statute of limitations for refund claims].)

³ R&TC section 19112 also allows respondent to abate interest, but that statute requires a taxpayer to demonstrate extreme financial hardship caused by a significant disability or other catastrophic circumstance. OTA does not have the legal authority to review or reverse respondent's denial of interest abatement based on extreme financial hardship. (*Appeal of Moy, supra.*)

delay by respondent when performing a ministerial or managerial act. R&TC section 21012 provides for interest abatement when a taxpayer reasonably relied on respondent's written advice.


Here, appellant does not argue that any of these waiver provisions apply. Appellant does not contend that there was any unreasonable error or delay by respondent. There is no evidence that appellant obtained or reasonably relied on written advice from respondent. Therefore, appellant has not demonstrated any legal grounds for interest abatement.

HOLDINGS

1. Appellant has not established error in respondent's assessment, which is based on a federal determination.
2. Appellant has not established a legal basis for the abatement of interest.


DISPOSITION

Respondent's actions are sustained.


Signed by:

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 Seth Elsom
 Hearing Officer

We concur:

Signed by:

 E595B34010D847D...

 Lauren Katagihara
 Administrative Law Judge

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 7B17E958B7C14AC...

 Amanda Vassigh
 Administrative Law Judge

Date Issued: 4/22/2025