

FACTUAL FINDINGS

1. Appellant timely filed a 2018 California Resident Income Tax Return (tax return) using a California address. Appellant reported total tax of \$7,165.¹
2. FTB subsequently received information that the IRS increased appellant's reported federal adjusted gross income by \$35,679. The additions consist of unreported 1099-R retirement income of \$35,590 and unreported interest income of \$89.
3. FTB issued a Notice of Proposed Assessment (NPA) dated September 21, 2022, proposing to increase appellant's reported taxable income by \$35,679. The NPA proposed additional tax of \$3,318, plus applicable interest.
4. Appellant filed a timely protest and a request for interest abatement.
5. FTB issued a Notice of Action affirming the NPA. FTB also issued a Notice of Determination Not to Abate Interest denying appellant's request for interest abatement.
6. Appellant's federal Wage and Income Transcript shows that four third-party reporters (to the IRS) listed a California address for appellant for taxable year 2018, and one listed a Washington State address.
7. Appellant filed this timely appeal. On appeal, appellant claims a serious disability occurring in 2014 which required substantial care and treatment for years, including 2018. Appellant also asserts he left California in 2014 and never moved back to California. In support of his contentions, appellant provides: (1) a Form W-2 Wage and Tax Statement (W-2) for an unidentified taxable year issued to appellant at a Washington State address;² (2) a medical record dated April 10, 2015, addressed to appellant at a California address; (3) May 28, 2015 images reviewed by Scripps Institute, which has a California address; and (3) an August 10, 2020 report from Inland Imaging, reflecting a referral that originated at a California address.

¹ Appellant reported real estate and other withholdings (other withholdings) of \$10,656. FTB issued a Notice of Tax Return Change – Refund, reducing the other withholdings by \$5,328 to \$5,328 and reducing appellant's claimed refund accordingly. Subsequently, FTB allowed additional other withholdings and refunded \$3,823.65 to appellant after \$1,883 was intercepted by the DMV to pay a pending balance.

² The wages reported on appellant's 2018 tax return do not match the wages reported on the W-2 provided. Also, the W-2 listed in appellant's federal Wage and Income Transcript shows a California address for 2018.

DISCUSSION

Issue 1: Has appellant shown error in FTB's proposed assessment, which is based on federal adjustments?

A taxpayer must either concede the accuracy of a federal determination or state how the federal determination is erroneous. (R&TC, § 18622(a); *Appeal of Dillahunty*, 2020-OTA-024P.) A deficiency assessment based on a federal audit report is presumptively correct, and the taxpayer bears the burden of proving that the determination is erroneous. (*Ibid.*) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof with respect to an assessment based on a federal action. (*Ibid.*)

“Gross income” includes income from all sources including annuities, pensions, and interest. (Internal Revenue Code (IRC), § 61(a)(4), (8) and (10); R&TC, § 17071.) Generally, a distribution from a qualified retirement plan or an individual retirement account is included in income for the year of distribution. (IRC, §§ 402(a), 408(d); R&TC, § 17501.)

Here, appellant does not dispute that during the 2018 taxable year, he received but did not report retirement income of \$35,590 and interest income of \$89. Likewise, appellant does not argue that the IRS adjustments are erroneous. Instead, appellant asserts that he forgot to pay tax on the retirement income, and he assumed the retirement income was not taxable due to his medical disability. Appellant requests that OTA reduce the proposed tax and interest to zero.

Appellant's arguments are reasonable cause arguments that typically are asserted in support of abating penalties. However, in this case FTB did not assess a penalty. Appellant has not pointed to any authority, and OTA is aware of none, that would allow for abatement of tax based on an error, misunderstanding of the law, or reasonable cause.

Since FTB's deficiency assessment is presumptively correct, and appellant has not provided any evidence or arguments showing error in the proposed assessment, appellant has not met his burden of showing that the federal adjustments are erroneous. Additionally, appellant's 2018 federal account transcript does not show that the IRS's assessment of tax was cancelled or revised. Therefore, FTB's adjustments adding retirement and interest income to appellant's total income are correct.

Appellant also argues that the proposed assessment is erroneous because he was not a resident of California for the 2018 taxable year. More specifically, appellant asserts that he left California and was never in California after December of 2014. Appellant explains that he left

California after surgery in December 2014. Appellant states that he moved to Washington State to live with his parents for long-term care.³

California residents are taxed on their entire taxable income (regardless of source), while nonresidents are only taxed on income from California sources. (R&TC, §§ 17041(a), (b), & (i), 17951.) Part-year residents are taxed on their income (regardless of source) earned while residents of this state, as well as all income derived from California sources while nonresidents. (R&TC, § 17041(b) & (i).) The term “resident” includes: (1) every individual who is in California for other than a temporary or transitory purpose; and (2) every individual domiciled in California who is outside California for a temporary or transitory purpose. (R&TC, § 17014(a).) Thus, an individual domiciled in California remains a resident until he or she leaves for other than a temporary or transitory purpose. (See, Cal. Code Regs., tit. 18, § 17014.)

In support of his assertion that he was no longer a resident of California in 2018, appellant provides a copy of a federal W-2 issued by Delta Airlines, which is missing the taxable year for which it was issued and an imaging report showing he received medical services in Washington State in 2020, two years after the taxable year at issue. While appellant’s address reported on the W-2 is in Washington State, the compensation amount shown on the W-2 does not match the reported compensation on appellant’s 2018 tax return. Moreover, the W-2 issued for 2018 reports a California address for appellant. Thus, the W-2 provided on appeal does not support appellant’s argument that he was not a resident of California in 2018. Moreover, the report from Inland Imaging, dated August 10, 2020, shows that the referring doctor was located in La Jolla, California.

Appellant’s contentions regarding the timing of his purported move out of California are unsubstantiated and contradicted by the evidence in OTA’s record. The record reflects that appellant filed a 2018 California *Resident* Income Tax Return on April 18, 2019, listing a California address as his residence. Appellant’s tax return preparer likewise lists a California address where appellant’s 2018 tax return was prepared. Appellant also provides various medical records showing that he received treatment in California during 2015 and was referred for treatment by a California-based medical practitioner in 2020. Four out of five third-party reporters for wages and income were sent to appellant at a California address. Therefore, the

³ In appellant’s protest with FTB, he stated that he resided in California for three weeks in December 2018 before moving to Washington State. On appeal, appellant claims to have moved in December 2014.

evidence in the record on appeal does not reflect that appellant changed his residence to Washington State before taxable year 2018.⁴ Appellant has not met his burden of proving that he changed his residence from California to Washington State for the 2018 taxable year.

Issue 2: Has appellant established a basis to abate interest?

Appellant argues that OTA should abate the tax, penalties and interest based on reasonable cause. However, FTB did not impose any penalties, and as noted above, tax cannot be abated based on reasonable cause. 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 a 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. (*Appeal of Moy, supra*.)

As appellant only argues reasonable cause to abate interest, he has not established that he is entitled to any interest abatement. Therefore, FTB properly imposed interest, and OTA has no basis to abate it.

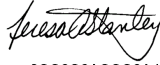
⁴ Given the limited amount of evidence in the record with respect to residency, OTA does not discuss domicile and residency in detail. Appellant's evidence contradicts his contention that he permanently moved out of California prior to taxable year 2018.

HOLDINGS

1. Appellant has not shown error in FTB’s proposed assessment, which is based on federal adjustments.
2. Appellant has not established a basis to abate interest.


DISPOSITION

FTB’s action is sustained.


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 Teresa A. Stanley
 Administrative Law Judge

We concur:

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 Amanda Vassigh
 Administrative Law Judge

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 Erica Parker
 Hearing Officer

Date Issued: 4/16/2025