

In the Matter of the Appeal of:

R. MAJOR AND

J. MAJOR

) OTA Case No. 240215274
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1. On October 15, 2019, appellants timely filed a joint 2018 California Resident Income Tax Return reporting zero taxable income and zero tax due.
2. Respondent received information from the IRS showing that the IRS increased appellants' federal adjusted gross income (AGI) by \$274,404 to account for unreported business and interest income.
3. Appellants did not notify respondent of the federal adjustment.

4. On March 23, 2023, respondent issued appellants a Notice of Proposed Assessment (NPA) for the 2018 tax year based on the federal adjustments, proposing to increase California taxable income by \$274,404, and to assess additional tax of \$14,926 and applicable interest.
5. On April 28, 2023, appellants protested the NPA, arguing that the IRS reversed the federal adjustment.
6. On May 11, 2023, respondent issued appellants a protest acknowledgement letter.
7. On July 13, 2023, respondent obtained appellants' federal account transcript for the 2018 tax year, which as relevant here, shows the following: (1) additional tax of \$44,319 and applicable interest was assessed on September 13, 2021; (2) tax of \$44,319 and applicable interest was removed on November 8, 2021; (3) additional tax of \$44,319 and applicable interest was assessed by examination on August 29, 2022; and (4) a payment of \$48,331.11 was made on September 16, 2022.
8. On October 13, 2023, respondent issued appellants a letter stating that the NPA was based on information provided by the IRS showing an adjustment to appellants' federal AGI. Respondent stated that information from the IRS does not show that the IRS canceled or reduced the federal adjustment, and that appellants may submit additional information showing that the IRS cancelled or reduced the federal adjustment. Appellants did not respond.
9. On January 3, 2024, respondent issued appellants a Notice of Action (NOA) affirming the NPA.
10. On January 30, 2024, appellants filed this timely appeal, which they later supplemented on March 11, 2024.
11. During the appeal, respondent submitted appellants' federal account transcript for the 2018 tax year which shows that, as of May 1, 2024, the IRS has not canceled or reduced the federal adjustment.¹

¹ As of May 1, 2024, appellants had a federal account balance of \$1,500 plus applicable interest.

DISCUSSION

Issue 1: Whether respondent's proposed assessment is barred by the statute of limitations.

In general, respondent must issue a proposed assessment within four years of the date a taxpayer files a California return. (R&TC, § 19057.) If the IRS makes a change or correction to “any item required to be shown on a federal tax return, including any gross income, deduction, penalty, credit, or tax for any year,” the taxpayer must report the federal change to respondent within six months after the date it becomes final. (R&TC, § 18622(a).) If there are adjustments to the taxpayer’s federal account and the taxpayer or the IRS notifies respondent within six months of the date that the federal change becomes final, then respondent may issue a proposed assessment within two years of the date of notification, or within the general four-year statute of limitations period, whichever expires later. (R&TC, §§ 18622, 19059.) If the taxpayer or the IRS notifies respondent of the federal change or correction after the six-month notification period, then respondent may issue a proposed assessment within four years of the date of the notification. (R&TC, § 19060(b).) If the taxpayer fails to notify respondent of the federal change, then respondent may issue a proposed assessment at any time. (R&TC, § 19060(a).)

Here, appellants argue that the statute of limitations to assess additional tax has expired. Appellants filed their 2018 tax return on October 15, 2019. Subsequently, the IRS increased appellants’ federal AGI for the 2018 tax year and notified respondent of the federal adjustment. However, appellants did not report the federal adjustment to respondent, which allowed respondent to issue an NPA at any time. Nonetheless, respondent issued the NPA to appellants on March 23, 2023, which was within four years from the date appellants filed their 2018 tax return on October 15, 2019. Therefore, OTA finds that respondent’s proposed assessment was timely issued to appellants and is not barred by the statute of limitations.

Issue 2: Whether appellants have demonstrated error in respondent’s proposed assessment, which is based on a federal determination.

A taxpayer shall either concede the accuracy of a federal determination or state how it is erroneous. (R&TC, § 18622(a).) 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. (*Appeal of Gorin*, 2020-OTA-018P.) Unsupported assertions are insufficient to satisfy a taxpayer’s burden of proof with respect to an assessment based on a federal action. (*Ibid.*)

Here, respondent issued appellants the NPA based on a final federal determination. As of May 1, 2024, the IRS has not canceled or made any changes to its income tax adjustment. Accordingly, respondent's proposed assessment based on the federal adjustment is presumed to be correct, and appellants bear the burden of proving otherwise.

Appellants do not appear to dispute the accuracy of the federal adjustment.² Instead, appellants argue that respondent's explanation of the proposed assessment is not sufficient, and that respondent's delay in issuing the proposed assessment justifies its reversal.

However, as discussed above, respondent timely issued the NPA to appellants. Moreover, the NPA clearly explains that respondent's proposed assessment of additional tax was based on information received from the IRS, which indicated that the IRS increased appellants' federal AGI. Accordingly, appellants have not shown error in respondent's proposed assessment.

Issue 3: Whether appellants have established a basis to abate interest.

If a taxpayer fails to pay any amount of tax on or before the due date, interest is required to be imposed from the due date until the date the tax is paid. (R&TC, § 19101(a).) Interest is not a penalty but is merely compensation for a taxpayer's use of money after it should have been paid to the state. (*Appeal of Balch*, 2018-OTA-159P.) The imposition of interest is mandatory, and to obtain interest relief, a taxpayer must qualify under the provisions of either R&TC section 19104 (unreasonable error or delay by respondent in the performance of a ministerial or managerial act), 19112 (extreme financial hardship),³ or 21012 (reasonable reliance on respondent's written advice). (*Ibid.*) There is no reasonable cause exception to the imposition of interest. (*Appeal of Gorin, supra.*)

Under R&TC section 19104, respondent may abate interest related to a proposed deficiency to the extent that the interest is attributable in whole or in part to any unreasonable error or delay by an officer or employee of respondent (acting in his or her official capacity) in performing a ministerial or managerial act, which occurred after respondent contacted the taxpayer in writing regarding the proposed assessment, provided that no significant aspect of the error or delay is attributable to the taxpayer. (R&TC, § 19104(a)(1), (b)(1).)

² Appellants argued in their protest to respondent that the IRS reversed the additional tax assessment, but appellants do not renew this argument on appeal. Appellants assert on appeal that they filed a petition with the United States Tax Court, which resulted in a stipulated decision with the IRS to remove federal penalties associated with the federal tax assessment. Respondent imposed no penalties on appellants, and no penalties are at issue in this appeal.

³ OTA does not have jurisdiction to review respondent's interest abatement determination under R&TC section 19112. (*Appeal of Gorin, supra.*)

OTA's jurisdiction in an interest abatement case is limited, and OTA may only review respondent's denial of a request for interest abatement for abuse of discretion. (R&TC, § 19104(b)(2)(B), (b)(4); See *Appeal of Gorin, supra.*) To show an abuse of discretion, the taxpayer must establish that, in refusing to abate interest, respondent exercised its discretion arbitrarily, capriciously, or without sound basis in fact or law. (*Appeal of Gorin, supra.*)

Here, respondent denied appellants' request for interest abatement. Appellants argue that interest should be abated because of respondent's excessive delay in issuing the proposed assessment.⁴

However, under R&TC section 19104, respondent may only abate interest which occurred after respondent contacted appellants in writing regarding the proposed assessment. Therefore, respondent did not abuse its discretion in denying the abatement of any interest accrued before respondent timely issued the NPA on March 23, 2023.

Subsequent to the issuance of the NPA, respondent did the following: (1) on May 11, 2023, acknowledged appellants' protest of the NPA; (2) on October 13, 2023, notified appellants of its position that the proposed assessment was correct based on information received from the IRS, and requested additional information from appellants to show the IRS had reduced or cancelled the federal determination; and (3) on January 3, 2024, issued the NOA to appellants.

Respondent acknowledged appellants' protest of the NPA within two weeks. Then, respondent confirmed its proposed assessment based on updated IRS information and requested additional information from appellants about five months later. Appellants failed to respond or provide any additional information to dispute the proposed assessment, and respondent issued the NOA to appellants less than three months later. There is no evidence showing that a ministerial or managerial act by respondent caused any unreasonable delay. The mere passage of time does not establish error or delay in performing a ministerial or managerial act. (*Appeal of Gorin, supra.*) Based on the foregoing, OTA finds that respondent did not abuse its discretion in denying appellants' request for interest abatement.

⁴ Appellants do not specify any period for which interest should be abated.

HOLDINGS

1. Respondent's proposed assessment is not barred by the statute of limitations.
2. Appellants have not demonstrated error in respondent's proposed assessment, which is based on a federal determination.
3. Appellants have not established a basis to abate interest.

DISPOSITION

Respondent's action is sustained.

DocuSigned by:

Steven Kim

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Steven Kim
Administrative Law Judge

We concur:

Signed by:

Kim Wilson

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Kim Wilson
Hearing Officer

DocuSigned by:

Asaf Kletter

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Asaf Kletter
Administrative Law Judge

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