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7 **BOARD OF EQUALIZATION**
8 **STATE OF CALIFORNIA**

10 In the Matter of the Appeal of:) **HEARING SUMMARY**
11) **PERSONAL INCOME TAX APPEAL**
12 **WILLARD M. CHRISTINE**¹) Case No. 743543

	<u>Year</u>	<u>Proposed Assessment</u>
	2006	\$1,168 ²

16 Representing the Parties:

17 For Appellant: Willard M. Christine
18 For Franchise Tax Board: Marguerite Mosnier, Tax Counsel III

20 **QUESTION:** Whether appellant has established error in respondent's proposed assessment.

23 ¹ Appellant resides in Redondo Beach. Although the proposed assessment was addressed to both appellant and his wife,
24 only appellant is a party to this appeal. While the Board's Board Proceedings Division notified appellant that his wife
25 needed to provide her signature if she intended to be a party to the appeal, appellant's wife did not provide such a signature.

26 ² Respondent asserts that, upon further review, appellant properly claimed Schedule A itemized deductions totaling \$28,812
27 on the 2006 California return. Respondent states that the additional assessed tax associated with the Social Security income
28 is \$392, which is the amount remaining at issue in this appeal.

Respondent states that it suspended interest on this amount from October 15, 2008 to July 23, 2009, pursuant to R&TC
section 19116, and that it will abate interest from April 1, 2010 to January 9, 2013, pursuant to R&TC section 19104.
Respondent states that the total interest accrued to November 4, 2013 is \$74.42. Therefore, the total amount at issue as of
that date is \$466.42 (i.e., \$392.00 + \$74.42.)

1 HEARING SUMMARY

2 Background

3 Appellant and his wife filed a timely California tax return for the 2006 tax year. The
4 couple reported federal adjusted gross income (AGI) of \$137,067, less California adjustments
5 (a reduction) of \$44,862, and itemized deductions of \$24,187, resulting in a California taxable income
6 of \$68,018 and tax of \$2,329. After subtracting exemption credits of \$364, appellant and his wife
7 reported a tax liability of \$1,965. The couple reported withholding credits of \$4,625 and claimed an
8 overpayment of \$2,660, which respondent refunded. (Resp. Op. Br., pp. 1-2, Exs. A & B.)

9 Subsequently, respondent received information from the Internal Revenue Service (IRS)
10 which indicated that the couple's total Social Security benefits were \$33,711 and that the taxable
11 portion included in their federal AGI was \$28,654. The IRS information also showed that the couple
12 was allowed itemized deductions totaling \$19,131. Based on the IRS information, respondent issued a
13 Notice of Proposed Assessment (NPA) on July 8, 2009, increasing the couple's taxable income by
14 \$14,738,³ from \$68,018 to \$82,756, and proposing additional tax of \$1,168, plus interest. Respondent
15 revised the couple's Social Security benefits from \$33,711 to \$28,654, and revised their itemized
16 deductions from \$24,187 to \$19,131. (Resp. Op. Br., pp. 2, Exs. B, C & D.)

17 Appellant protested the NPA, arguing that the language on respondent's Schedule CA
18 was incomplete, flawed and misleading because it only stated "Social Security Benefits." Respondent
19 stated that its records indicated that, during a March 2010 telephone conversation between respondent
20 and appellant, respondent advised appellant that it received additional information from the IRS
21 substantiating the amount of itemized deductions claimed on the California return, and noted that
22 appellant requested that the protest hearing be held in respondent's Los Angeles office. Thereafter,
23 respondent misplaced appellant's protest file, and it was not located until January 2013.⁴ (Resp. Op.

24 _____
25
26 ³ The \$14,738 increase in taxable income is composed of the following: (1) a \$28,654 reduction for taxable Social Security
27 income, per the IRS; (2) a \$33,711 add back for the Social Security income adjustment made on the tax return; (3) a \$19,131
28 reduction for itemized deductions allowed by the IRS; and (4) a \$28,812 add back for the itemized deductions originally
claimed on the return. ($\$33,711 - \$28,654 + \$28,812 - \$19,131 = \$14,738$ increase in taxable income.) (Resp. Op. Br.,
Ex. D.)

⁴ As noted in footnote 2 above, respondent states that it will abate interest on the proposed liability associated with this
delay.

1 Br., p. 3. Ex. E.)

2 Respondent sent letters dated January 14, 2013, February 14, 2013, and March 14, 2013,
3 discussing the issues raised at protest and setting the protest hearing. Appellant sent respondent an
4 email on March 25, 2013, expressing his concern and dismay regarding the missing file and delay in
5 the protest proceedings. Respondent replied on April 19, 2013, apologizing for the delay in processing
6 appellant's request and abating the amount of interest assessed on appellant's 2006 tax year associated
7 with the delay. (Resp. Op. Br., pp. 2-3, Exs. F, G, H & J.)

8 The protest hearing was held April 8, 2013. At the hearing, appellant gave respondent a
9 letter outlining the items to discuss at the hearing. On April 25, 2013, respondent sent appellant a
10 post-hearing position letter. Appellant replied to respondent by letter on May 23, 2013, stating in part
11 that he disagreed with respondent on grounds of undue delay and estoppel by *laches*. In a letter dated
12 June 17, 2013, respondent summarized its position regarding why neither undue delay nor estoppel by
13 *laches* resulted in the proposed assessment not being collectible. (Resp. Op. Br., p. 3, Exs. K, L, M &
14 N.)

15 Respondent issued a Notice of Action (NOA) on June 27, 2013, affirming the proposed
16 adjustments and additional tax.⁵ (Resp. Op. Br., p. 3, Appeal Letter, Att.) Appellant then filed this
17 timely appeal. (Resp. Op. Br., p. 3.)

18 Contentions

19 Appellant's Contentions

20 Appellant asserts that respondent informed him that the documents from his and his
21 wife's 2006 return were temporarily lost from April 1, 2010 to January 9, 2013, a period of
22 approximately 33 months. Appellant also asserts that respondent informed him that documents from
23 multiple other returns had been lost. Appellant states that respondent was unable to determine the
24 cause for the missing returns. Appellant contends that respondent forfeited the right to collect tax from
25 him due to its neglect, inefficiency, and the stress that it imposed on appellant. Appellant contends that,
26 similar to the stringent penalties imposed on taxpayers who fail to respond to respondent in a timely
27

28 ⁵ The NOA states that respondent will suspend interest from April 1, 2010 to January 9, 2013.

1 fashion, there should be penalties imposed on respondent for neglecting a taxpayer for an inordinate
2 amount of time. (Appeal Letter.)

3 Citing Rule 403 of the Federal Rules of Evidence, appellant states that relevant evidence
4 may be excluded if it is substantially outweighed by undue delay. Appellant contends that 33 months
5 qualifies as undue delay. Appellant also contends that respondent should be barred from asserting its
6 claim pursuant to the doctrine of estoppel by laches due to its negligence and unreasonable delay.
7 (Appeal Letter.)

8 In his reply brief, appellant asserts that he “does not raise any objection to the proposed
9 adjustments or resultant proposed additional tax.” Appellant reiterates his argument that respondent
10 forfeited its right to collect appellant’s 2006 tax liability “by causing appellant an undue emotional and
11 psychological hardship due to respondent’s slipshod handling of this matter over the years.” Appellant
12 argues that respondent has committed egregious, disqualifying errors by misplacing the case file for
13 almost three years, not being in possession of appellant’s items of discussion letter at the time of the
14 protest hearing, and lowering appellant’s deficiency from an estimated \$1,300.00 to \$1,168.00 to
15 \$466.42. Appellant also argues that respondent has not “as required by law on July 1, 1989, developed
16 and/or honored a plan to reduce the time to resolve protests, appeals and amended return claims for
17 refunds.” Appellant asserts that he was not capable of advising respondent of the facts surrounding the
18 reason for the 33-month misplacement of the case file. Appellant contends that during the time period
19 the file was misplaced, no action was taken by respondent. Appellant states that during this time
20 period, he was and currently is being treated for health issues. (App. Reply Br.)

21 Respondent’s Contentions

22 Citing Revenue and Taxation Code (R&TC) section 17087, respondent states that
23 California does not tax Social Security benefits that are includable in federal AGI. For the 2006 tax
24 year, respondent states that appellant and his wife received Social Security benefits totaling \$33,711,
25 but only \$28,654 of this sum was taxable and included in appellant’s federal AGI. Respondent
26 contends that appellant’s Schedule CA adjustment subtracting Social Security benefits was therefore
27 limited to \$28,654. Respondent states that the Schedule CA specifies that the taxable amounts from the
28 federal return are to be reported on line 20, column A. Respondent contends that the couple did not

1 report any amount on line 20, column A of the Schedule CA. Respondent asserts that the couple should
2 have reported \$28,654 in both column A and B on line 20. Instead, respondent states that they
3 erroneously reported \$33,711 in column B only. Respondent argues that the NPA properly revised the
4 Social Security benefits subtracted on appellant's California return from \$33,711 to \$28,654. (Resp.
5 Op. Br., p. 3. Exs. A & C.)

6 Respondent contends that appellant failed to establish error in its proposed assessment.
7 Respondent contends that its determination is presumed correct, and appellant has the burden of proof
8 in overcoming the presumption. Respondent asserts that the proposed additional tax of \$392 based on
9 information received from the IRS is correct.⁶ (Resp. Op. Br., p. 4.)

10 In response to appellant's equitable estoppel argument, respondent contends that it spoke
11 to appellant in March of 2010 during which appellant requested a protest hearing in respondent's
12 Los Angeles office. Respondent states that it did not locate appellant's file until January of 2013, but
13 its records do not indicate that appellant contacted respondent during that time interval to inquire about
14 the status of the protest. Respondent also contends that appellant cannot show that he was harmed as a
15 result of the delay in concluding the protest because respondent has agreed to abate the interest on the
16 proposed assessment from April 1, 2010 to January 9, 2013, the time period during which the protest
17 file was misplaced. Respondent contends that neither appellant's tax liability nor the accrued interest
18 increased as a result of the file's misplacement. Respondent argues that appellant has not shown that
19 the elements of equitable estoppel are present. (Resp. Op. Br., p. 4-5. Ex. O.)

20 Applicable Law

21 Burden of Proof

22 The FTB's determination is presumed correct and an appellant has the burden of proving
23 it to be wrong. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509; *Appeal of Michael E. Myers*,
24 2001-SBE-001, May 31, 2001.) In the absence of uncontradicted, credible, competent, and relevant
25 evidence showing an error in the FTB's determinations, respondent's determinations will be upheld.
26 (*Appeal of Oscar D. and Agatha E. Seltzer*, 80-SBE-154, Nov. 18, 1980.)

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28 ⁶ As noted in footnote 2 above, respondent now asserts that appellant properly claimed Schedule A itemized deductions totaling \$28,812 on the 2006 California return.

1 Interest Abatement

2 Interest is not a penalty but is merely compensation for the taxpayer's use of money.
3 (Rev. & Tax. Code, § 19101, subd. (a); *Appeal of Amy M. Yamachi*, 77-SBE-095, June 28, 1977;
4 *Appeal of Audrey C. Jaegle*, 76-SBE-070, June 22, 1976.) To obtain interest abatement, an appellant
5 must qualify under one of the following three statutes: R&TC sections 19104, 19112, or 21012.⁷

6 Under R&TC section 19104, subdivision (a)(1), respondent may abate all or a part of
7 any interest on a deficiency to the extent that interest is attributable in whole or in part to any
8 unreasonable error or delay committed by respondent in the performance of a ministerial or managerial
9 act. (Rev. & Tax. Code, § 19104, subd. (a)(1).) An error or delay can only be considered when no
10 significant aspect of the error or delay is attributable to an appellant and after respondent has contacted
11 the appellant in writing with respect to the deficiency or payment. (Rev. & Tax. Code, § 19104,
12 subd. (b)(1).) There is no reasonable cause exception to the imposition of interest. (*Appeal of*
13 *Audrey C. Jaegle, supra.*)

14 STAFF COMMENTS

15 As mentioned above, respondent has conceded the Schedule A itemized deduction
16 adjustment (see footnote 2 above), such that the only amount remaining in dispute in this matter is the
17 taxability of appellant's Social Security income, resulting in tax due of \$392. Appellant has not
18 provided any specific contentions or evidence to dispute this proposed adjustment. Instead, appellant
19 contends that the amount of additional tax should be waived due to the allegedly unreasonable error and
20 delay committed by respondent during the protest process. Respondent has addressed the 33-month
21 delay by agreeing to abate interest from April 1, 2010 to January 9, 2013, representing the period in
22 which it had misplaced appellant's file. However, there is no provision in the law that would allow for
23 the abatement of the remaining tax liability as appellant desires.

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27 ⁷ It does not appear that R&TC section 21012 is applicable because there has been no reliance on any written advice
28 requested of respondent. Under R&TC section 19112, interest may be waived for any period for which respondent
determines that an individual or fiduciary demonstrates an inability to pay that interest solely because of extreme financial
hardship caused by a significant disability or other catastrophic circumstance. It appears that this statute does not provide
any authority for the Board to review respondent's determination whether to abate interest for extreme financial hardship.