

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18010900
RICARDO W. DODSON)
) Date Issued: December 2, 2019
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)

OPINION

Representing the Parties:

For Appellant: Ricardo W. Dodson

For Respondent: Freddie C. Cauton, Legal Analyst

For Office of Tax Appeals: Andrea Long, Tax Counsel

M. GEARY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, appellant Ricardo W. Dodson appeals an action by the respondent Franchise Tax Board (FTB) proposing the imposition of interest of \$140.04 for the 2012 tax year.¹

Appellant waived his right to an oral hearing; therefore, we decide the matter based on the written record.

ISSUE

Is appellant entitled to additional interest abatement?

FACTUAL FINDINGS

1. Appellant timely filed a 2012 California income tax return (Form 540). Appellant reported California adjusted gross income of \$81,097, less California adjustments of \$2,706 and itemized deductions of \$8,055, for a taxable income of \$70,966, and a tax of \$4,206. After subtracting exemption credits of \$104, appellant reported a total tax

¹ Appellant appealed FTB’s proposed assessment of \$763 tax, plus interest, but in a supplemental brief, he conceded the proposed tax and requested abatement of interest, which FTB denied in part.

- liability of \$4,102. After applying a withholding credit of \$3,554 and excess state disability insurance (SDI) withholding of \$16, appellant reported a tax due of \$532.
2. FTB received information from the Internal Revenue Service (IRS) in the form of a CP2000 Data Sheet, indicating that the IRS made adjustments to appellant's 2012 federal return. As applicable to this appeal, the CP2000 Data Sheet shows that the IRS made adjustments for unreported interest income of \$20 and forgiveness of debt income of \$8,181.
 3. FTB issued a Notice of Proposed Assessment (NPA) to appellant on December 9, 2015. The NPA increased appellant's reported taxable income consistent with the federal adjustment referenced above. The NPA proposed additional tax of \$763, plus interest, and explained that the notice was based on information FTB received from the IRS.
 4. On January 3, 2016, appellant protested the NPA, indicating that he did not have a record of any debt forgiveness for the 2012 year or any other tax year. Appellant requested that FTB provide the name of the creditor claiming debt forgiveness of \$8,181.
 5. FTB responded on May 27, 2017. On that date, FTB sent appellant a letter acknowledging appellant's protest and explaining that the NPA was based on an IRS report, which showed changes made to his federal income tax return. FTB explained that, because the federal changes involved issues with which California conforms to federal law, the NPA was based upon those federal changes. FTB informed appellant that if FTB's changes were not correct or were inconsistent with the federal adjustment, appellant should send a copy of the revised IRS report or other information showing that federal adjustment had been changed or was incorrect. FTB requested a response by June 20, 2017.
 6. After receiving no response from appellant, FTB issued a Notice of Action on September 1, 2017, affirming the NPA.
 7. This timely appeal followed.
 8. By letter dated April 12, 2018, appellant agreed to the proposed tax, but continued to protest the imposition of interest.
 9. By letter dated November 7, 2018, FTB agreed to abate interest from January 3, 2017, to May 27, 2017.

DISCUSSION

Imposing interest on a tax deficiency is mandatory. (R&TC, § 19101, subd. (a).) Interest is not a penalty but is compensation for the taxpayer's use of money after it should have been paid to the state. (*Appeal of Amy M. Yamachi* (77-SBE-095) 1977 WL 3905.) There is no reasonable cause exception to the imposition of interest. (*Appeal of Yvonne M. Goodwin* (97-SBE-003) 1997 WL 258474.)

To obtain interest abatement, appellant must qualify for such relief under R&TC section 19104.² Under section 19104, the FTB may abate all or a part of any interest on a deficiency to the extent that interest is attributable in whole or in part to any unreasonable error or delay committed by FTB in the performance of a ministerial or managerial act. (R&TC, § 19104(a)(1).) An error or delay can only be considered when no significant aspect of the error or delay is attributable to an appellant and after the FTB contacted the appellant in writing with respect to the deficiency or payment. (R&TC, § 19104(b)(1); *Appeal of Ernest J. Teichert* (99-SBE-006) 1999 WL1080256.)

In the *Appeal of Michael and Sonia Kishner* (99-SBE-007) 1999 WL 1080250, the Board of Equalization adopted the language from Treasury Regulation section 301.6404-2(b)(2), defining a “ministerial act” as:

[A] procedural or mechanical act that does not involve the exercise of judgment or discretion, and that occurs during the processing of a taxpayer's case after all prerequisites to the act, such as conferences and review by supervisors, have taken place. A decision concerning the proper application of federal tax law (or other federal or state law) is not a ministerial act.

When a California statute is substantially identical to a federal statute, such as with the interest abatement statute in this case,³ the Office of Tax Appeals (OTA) may consider federal law interpreting the federal statute as highly persuasive. (*Appeal of Michael and Sonia Kishner, supra.*) Treasury Regulation section 301.6404-2(b)(1) defines a “managerial act” as:

[A]n administrative act that occurs during the processing of a taxpayer's case

² R&TC sections 19112 and 21012 also provide for relief of interest; but both statutes are limited to circumstances not present here, and neither statute states that an FTB decision denying interest abatement is reviewable by the Office of Tax Appeals.

³ R&TC section 19104, subdivisions (a) and (b)(2)(B), are substantially identical to Internal Revenue Code section 6404(e) and (h).

involving the temporary or permanent loss of records or the exercise of judgment or discretion relating to management of personnel. A decision concerning the proper application of federal tax law (or other federal or state law) is not a managerial act.

A decision concerning the proper application of federal tax law, or other federal or state laws, to the facts and circumstances surrounding a taxpayer's tax liability is not a ministerial or managerial act. (Treas. Reg. § 301.6404-2(b); *Bucaro v. Commissioner*, T.C. Memo. 2009-247.) Workload constraints are not a basis for an abatement or refund of interest. (*Leffert v. Commissioner*, T.C. Memo. 2001-194.)

FTB's determination not to abate interest is presumed correct, and the burden is on an appellant to prove error. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509, 514; *Appeal of Michael E. Myers* (2001-SBE-001) 2001 WL 37126924.) Interest abatement provisions are not intended to be used routinely to avoid the payment of interest and abatement should be ordered only "where failure to abate interest would be widely perceived as grossly unfair." (*Lee v. Commissioner* (1999) 113 T.C. 145, 149.) Our jurisdiction in an interest abatement case is limited by statute to a review of the FTB's determination for an abuse of discretion. (R&TC, § 19104(b)(2)(B).) To show an abuse of discretion, a taxpayer must establish that, in refusing to abate interest, the FTB exercised its discretion arbitrarily, capriciously, or without sound basis in fact or law. (*Woodral v. Commissioner* (1999) 112 T.C. 19, 23.)

Appellant argues that this matter would have been resolved after his initial request for an accounting but that FTB "protracted and complicated the resolution . . . unnecessarily." In essence, appellant argues that there was unreasonable delay by FTB, and on that basis, he requests abatement of all interest for the tax year at issue.

The evidence does not show there was an unreasonable error or delay by an officer or employee of the FTB while performing a ministerial or managerial act. The mere passage of time does not prove unreasonable delay. FTB staff have workloads and it is reasonable that it would take some time to respond to a protest. The analysis of a protest and preparation of a response are not a ministerial or managerial act that could provide a basis for interest abatement. (*Denny's Auto Sales v. Commissioner*, T.C. Memo. 2002-266.) FTB concedes that its response to appellant's protest should have been sent within one year, and it has agreed to abate interest for the additional time it took to send the response, from January 3, 2017, to May 27, 2017. We find that FTB did not abuse its discretion by limiting its abatement of interest from

January 3, 2017, to May 27, 2017, and, therefore, appellant has not established that he is entitled to additional interest abatement.

HOLDING

Appellant has not demonstrated that he is entitled to additional interest abatement.

DISPOSITION

FTB’s action is modified in accordance with FTB’s agreement on appeal to abate interest that accrued from January 3, 2017 to May 27, 2017, but it is otherwise sustained.

DocuSigned by:
Michael Geary
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Michael F. Geary
Administrative Law Judge

We concur:

DocuSigned by:
Tommy Leung
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Tommy Leung
Administrative Law Judge

DocuSigned by:
Josh Lambert
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Josh Lambert
Administrative Law Judge