

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 19085209  
F. MABUNAY AND )  
M. MABUNAY )  
\_\_\_\_\_ )

**OPINION**

Representing the Parties:

For Appellants: F. Mabunay

For Respondent: Shanon Pavao, Tax Counsel III

For Office of Tax Appeals: James S. Whitehouse, Analyst

D. CHO, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19104(b)(2)(B), F. Mabunay and M. Mabunay (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ request to abate interest of \$626.03 for the 2015 taxable year.<sup>1</sup>

Appellants waived their right to an oral hearing; therefore, the matter is being decided based on the written record.

**ISSUES**

1. Whether appellants have demonstrated that interest should be abated.
2. Whether appellants have demonstrated that interest should have been suspended.

**FACTUAL FINDINGS**

1. Appellants purchased a solar energy system on August 14, 2013.
2. Appellants timely filed their joint 2015 California Resident Income Tax Return on

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<sup>1</sup> Appellants conceded the assessment of additional tax of \$4,430 but continued to dispute the interest amount of \$626.03, which was the amount of accrued interest listed on the Notice of Action (NOA). However, an additional interest amount of \$37.53 accrued from the date of the NOA and the date of payment. Appellants have not argued that there was an unreasonable error or delay during this period (while the appeal was being processed by the Office of Tax Appeals); therefore, we do not address this amount further.

- March 8, 2016. On their return, appellants claimed a solar or wind energy system credit (solar credit) carryover of \$4,430.
3. FTB examined appellants' return and disallowed the solar credit. FTB sent appellants a Notice of Proposed Assessment (NPA) dated April 2, 2019, which informed appellants of the disallowance of the solar credit and a tax due of \$4,430, plus applicable interest.
  4. Appellants protested the NPA by letter dated April 12, 2019.
  5. In response, on June 12, 2019, FTB sent appellants a letter acknowledging receipt of appellants' protest and explained that the solar credit is an expired credit that was no longer available. Therefore, based on the information contained in appellants' protest documents, FTB determined that appellants did not have a valid credit carryover.
  6. On August 6, 2019, FTB sent appellants an NOA, affirming the NPA.
  7. On August 29, 2019, appellants filed a timely appeal disputing only the accrued interest.
  8. On September 15, 2019, FTB received payment of the entire liability, which included all the accrued interest. Based on this payment, FTB treated the appeal as a denial of a claim for refund.

### DISCUSSION

#### Issue 1: Whether appellants have demonstrated that interest should be abated.

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

Pursuant to R&TC section 19104, FTB may abate all or any part of any interest on a proposed 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 the taxpayer and after FTB contacted the taxpayer in writing with respect to the deficiency or payment. (R&TC, § 19104(b)(1); *Appeal of Teichert* (99-SBE-006) 1999 WL1080256.)

Appellants argue that interest should be abated because there was an undue delay of four years before they were notified of the proposed assessment. While we note that FTB contacted appellants within three years from the payment due date and not four years, this discrepancy is immaterial. Instead, there is no dispute that FTB first contacted appellants in writing when it issued the NPA on April 2, 2019, and as stated above, R&TC section 19104(b)(1) provides that an error or delay can only be considered for purposes of interest abatement *after* FTB contacted appellants in writing with respect to the deficiency. Accordingly, no interest may be abated under R&TC section 19104 for the period from April 15, 2016, through April 2, 2019.

Appellants do not contend that FTB committed any error or delay in the performance of a ministerial or managerial act during the period after April 2, 2019, the date when FTB first contacted appellants in writing (NPA) concerning the proposed deficiency. In addition, there is no evidence of any errors or delay in the processing of appellants' protest on the part of FTB. The period between April 2, 2019, the first written contact (NPA), and August 6, 2019, the close of appellants' protest (NOA), was less than five months. Thus, we find that FTB did not abuse its discretion when it denied appellants' request for abatement of interest for this time period, and appellants are not entitled to interest abatement.

Issue 2: Whether appellants have demonstrated that interest should have been suspended.

R&TC section 19116 protects taxpayers from paying for the state's failure to provide prompt notice of a tax liability by suspending the imposition of interest in certain cases. FTB must suspend the imposition of interest if it "does not provide a notice to the taxpayer specifically stating the taxpayer's liability and the basis of the liability before the close of the notification period." (R&TC, § 19116(a).) The "notification period" is a 36-month period beginning on the *later* of either (1) the date on which the taxpayer files the return, or (2) the due date of the return without regard to extensions. (R&TC, § 19116 (b)(1)(A)-(B).)

Although appellants filed their 2015 return on March 8, 2016, the due date of their 2015 return was April 15, 2016. Therefore, the notification period ended on April 15, 2019, which is 36 months from April 15, 2016. FTB notified appellants of the proposed deficiency on April 2, 2019, by issuing the NPA, which was within the notification period. Accordingly, there is no basis for FTB to suspend interest under R&TC section 19116.

HOLDINGS

1. Appellants have not demonstrated that interest should be abated.
2. Appellants have not demonstrated that interest should have been suspended.

DISPOSITION

FTB’s action in denying appellants’ request for interest abatement is sustained.

DocuSigned by:  
*Daniel Cho*  
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 Daniel K. Cho  
 Administrative Law Judge

We concur:

DocuSigned by:  
*Kenneth Gast*  
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 Kenneth Gast  
 Administrative Law Judge

DocuSigned by:  
*John O Johnson*  
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 John O. Johnson  
 Administrative Law Judge

Date Issued: 6/30/2020