

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 21027235
A. CHANDRA (DEC'D))
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OPINION

Representing the Parties:

For Appellant: Karen Rockwell, Director

For Respondent: Leoangelo C. Cristobal, Tax Counsel

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, A. Chandra (Dec'd) (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$34,077.12 of paid interest for the 2017 taxable year.

Appellant waived his right to an oral hearing; therefore, this matter is decided based on the written record.

ISSUE

Whether appellant is entitled to a waiver of interest.

FACTUAL FINDINGS

1. At the time of his death in 2017:
 - a. Appellant was involved in ongoing divorce proceedings; and
 - b. Appellant’s restricted stock units from his employer became vested (due to appellant’s death), which triggered litigation over how much of the stock each spouse should receive.
2. Appellant filed an amended 2017 California Personal Income Tax Return in 2020, reporting over \$3.5 million in taxable income, after the Santa Clara Superior Court decided how much stock each spouse was entitled to receive. Since appellant’s original

- 2017 California Personal Income Tax return reported less than \$2 million in taxable income, the amended return showed additional tax due which was paid with the return.
3. FTB subsequently sent appellant a notice reflecting interest due on the tax that was paid upon filing the amended return. This interest amount is the subject of appellant's waiver request.
 4. No penalties were imposed by FTB.

DISCUSSION

The imposition of interest on a late tax payment is mandatory. (R&TC, § 19101(a.) Interest is charged from the due date of the tax payment to the date the tax is paid. (*Ibid.*) 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 Moy*, 2019 OTA-057P.) There is no reasonable cause exception to the imposition of interest and interest can only be waived in certain limited situations when authorized by law. (*Ibid.*)

To obtain an interest waiver, appellant must qualify under one of the following statutes: R&TC sections 19104, 21012, or 19112. First, R&TC section 19104 does not apply here because appellant does not allege, and the evidence does not show, that the interest at issue is attributable, in whole or in part, to any unreasonable error or delay by an officer or employee of FTB when performing a ministerial or managerial act. In fact, appellant asserts that the delay was due to the ongoing litigation proceedings. Second, R&TC section 21012 does not apply as FTB did not provide appellant with any requested written advice. Lastly, R&TC section 19112 does not apply because appellant does not allege, and the evidence does not show, that appellant is unable to pay interest due to "extreme financial hardship caused by significant disability or other catastrophic circumstance." In any event, OTA does not have jurisdiction to review FTB's denial of a request to waive interest under R&TC section 19112. (*Appeal of Moy, supra.*)

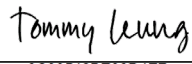
Appellant contends that since the assets in question were "frozen" during the divorce and stock ownership litigation, there was no tax liability until the court made its decision regarding the ownership of those assets, and those assets were not available for appellant to pay the tax due. However, the law does not permit a waiver of interest based on such arguments. Accordingly, there is no basis for a waiver of interest.

HOLDING

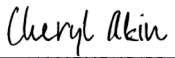
Appellant is not entitled to a waiver of interest.

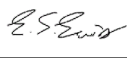
DISPOSITION

FTB’s action is sustained.

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Tommy Leung
Administrative Law Judge

We concur:

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Cheryl L. Akin
Administrative Law Judge

DocuSigned by:

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Elliott Scott Ewing
Administrative Law Judge

Date Issued: 7/29/2021