

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
P. BHUSHAN

) OTA Case No. 20127068
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OPINION

Representing the Parties:

For Appellant:

P. Bhushan

For Respondent:

Eric R. Brown, Tax Counsel III

J. JOHNSON, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, appellant P. Bhushan appeals an action by respondent Franchise Tax Board denying appellant’s claim for refund of \$830.05 of interest for the 2015 tax year.

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

ISSUE

Whether appellant has shown respondent abused its discretion in not granting an abatement of interest.

FACTUAL FINDINGS

1. Appellant filed his 2015 California income tax return within the automatic extension period on October 13, 2016.¹ Appellant’s return reported an overpayment of \$24.

¹ Appellant filed a joint 2015 return using the married filing jointly status with his spouse. Only appellant has filed this appeal, and references herein to appellant’s payment and filing activities may also include activities performed by the joint filer.

2. On October 31, 2016, respondent issued a Notice of Tax Return Change correcting appellant's estimated tax payment amount and reporting a balance due that included interest. Appellant paid the amount due on November 11, 2016.
3. On October 15, 2019, respondent issued a Notice of Proposed Assessment (NPA) to reflect appellant's status as a part-year resident and proposed an assessment of additional tax and interest. After the protest process, respondent issued a Notice of Action affirming the NPA, and appellant paid the amount due on September 14, 2020.
4. Appellant filed a claim for refund for interest, which respondent denied, and this timely appeal followed.

DISCUSSION

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, and there is no reasonable cause exception to the imposition of interest. (*Appeal of Gorin*, 2020-OTA-018P.)

Appellant requests interest abatement for the 2015 tax year based on the fact that respondent did not mail appellant a notice of deficiency until October 2019. Appellant asserts that interest of \$625.16² accrued during the period of April 15, 2016, to October 13, 2019. Appellant asserts that had respondent notified appellant of the deficiency in 2016, appellant would have settled it immediately and therefore would not have had to pay three years' worth of interest on the original amount owed. Appellant also asserts that \$204.38 of interest accrued between October 13, 2019, and August 25, 2020, while appellant appealed the notice and exchanged correspondence with respondent.³

Under R&TC section 19104(a)(1), respondent may abate interest related to a proposed deficiency to the extent the interest is attributable in whole or in part to: (1) an unreasonable error or delay; (2) by an officer or employee of respondent; (3) in performing a ministerial or managerial act; and (4) which occurred after respondent contacted the taxpayer in writing with respect to that deficiency, provided no significant aspect of that error or delay is attributable to

² This amount is listed as \$625.67 on the Notice of Action, which when added to the other interest amount at issue, \$204.38, equals the total amount at issue of \$830.05.

³ A small amount of interest was also paid by appellant in response to the Notice of Tax Return Change issued on October 31, 2016, but this amount is not at issue.

the taxpayer.⁴ (R&TC, § 19104(a)(1), (b)(1); *Appeal of Gorin, supra.*) We only review respondent's determination to not abate interest for 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, respondent exercised its discretion arbitrarily, capriciously, or without sound basis in fact or law. (*Appeal of Gorin, supra*; *Woodral v. Commissioner* (1999) 112 T.C. 19, 23.)

On October 15, 2019, respondent issued its NPA informing appellant of a proposed deficiency. This NPA is the first written contact from respondent to appellant regarding the proposed deficiency upon which the interest at issue accrued. Accordingly, no interest prior to the date of the NPA can be abated according to R&TC section 19104(b)(1), including the interest that accrued from April 15, 2016, through October 13, 2019. This leaves at issue only the interest that accrued after the issuance of the NPA.

Appellant's main argument is that respondent should have been quicker to send the NPA. However, respondent generally has four years from the date a tax return is filed to issue an NPA. (R&TC, § 19057.) Here, respondent issued its NPA within the allowable time frame. Acting within the statutorily authorized time period does not constitute an unreasonable error or delay. For the period of time after the issuance of the NPA during which interest accrued, appellant indicated that the NPA was being protested and correspondence was being exchanged. There is no evidence showing respondent caused an unreasonable error or delay during this period, or, if there was an unreasonable delay during this period, that no significant part of that delay was attributable to appellant. Accordingly, respondent did not err in denying appellant's request for interest abatement pertaining to the interest that accrued after the issuance of the NPA.

⁴ Interest abatement is also potentially available under provisions other than R&TC section 19104; however, appellant's argument that respondent caused an unnecessary delay in informing him of the deficiency falls squarely within the authority of R&TC section 19104, and appellant has not raised arguments applicable to other sections (e.g., reliance on written advice, extreme financial hardship).

HOLDING

Appellant has not shown that respondent abused its discretion in not granting an abatement of interest.

DISPOSITION

Respondent’s denial of the claim for refund is sustained.

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John O Johnson
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John O. Johnson
Administrative Law Judge

We concur:

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Huy "Mike" Le
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Huy "Mike" Le
Administrative Law Judge

DocuSigned by:
Sheriene Anne Ridenour
67F043D83EF547C...
Sheriene Anne Ridenour
Administrative Law Judge

Date Issued: 8/13/2021