

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 21047531
F. NOORI AND)
H. KARIMI)
_____)

OPINION

Representing the Parties:

For Appellants: F. Noori and H. Karimi

For Respondent: Maria Brosterhous, Tax Counsel IV

For Office of Tax Appeals: Lisa Burke, Business Taxes Specialist III

J. JOHNSON, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19104(b)(2), appellants F. Noori and H. Karimi appeal an action by respondent Franchise Tax Board in denying interest abatement for the 2016 tax year.

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

ISSUE

Whether appellants have shown that they are entitled to an abatement of interest for the 2016 tax year.

FACTUAL FINDINGS

1. Beginning in 2019, the IRS examined appellants’ 2016 federal tax return. Based on its examination, the IRS increased appellants’ federal taxable income and assessed additional tax, penalties and interest due.
2. Based on information received from the IRS and a review of appellants’ state tax return, respondent issued a Notice of Proposed Assessment (NPA) to appellants on July 20, 2020, for tax of \$4,036 and applicable interest.

3. In a protest filed on August 7, 2020, appellants indicated that they agreed with the proposed assessment of tax. However, appellants alleged that their accountant had been terminally ill at the time he prepared their return. Based on appellants' claim that the errors in their return likely were due to their accountant's serious medical condition, appellants requested that the interest on the additional tax be waived.
4. In a letter dated January 25, 2021, respondent informed appellants that it does not have the authority to waive interest based on allegations that the tax deficiency resulted from a tax preparer's error. Respondent added that since the proposed assessment was based on a federal audit and the IRS did not waive interest, respondent was unable to waive interest. Additionally, respondent informed appellants that, based on additional information received from the IRS, it would revise its NPA to reduce the additional tax from \$4,036 to \$3,776, plus interest.
5. On March 4, 2021, respondent issued a Notice of Action proposing an assessment of tax of \$3,776 and interest of \$689.75. Appellants filed this timely appeal, reiterating their request that interest be waived.¹

DISCUSSION

Interest is required to be assessed from the date when payment of tax is due through the date that it is paid. (R&TC, § 19101.) Imposition of interest is mandatory and is not a penalty, but is compensation for appellants' use of money after it should have been paid to the state. (*Appeal of Balch*, 2018-OTA-159P.) To receive abatement from the imposition of interest on appeal, a taxpayer must qualify under the waiver provisions of R&TC sections 21012 or 19104.² Appellants do not raise any specific arguments as to their qualification for the abatement of interest under these provisions.

¹ Appellants sent a check for \$4,465.75 together with their appeal based on respondent's Notice of Action dated March 4, 2021. The check represents payment in full of the tax of \$3,776 and the interest of \$689.75 shown in the Notice of Action. The check was forwarded to respondent, who indicates that it is currently being held in suspense during the pendency of this appeal, and will be credited to appellants' 2016 account effective upon the date respondent received the check, April 1, 2021.

² R&TC section 21012 provides that a person may be relieved of tax, interest, and penalties if the person's failure to make a timely return or payment was due to the person's reasonable reliance on written advice from the board, under specified conditions. R&TC section 19104 provides that respondent may abate interest if the interest is attributable in whole or in part to an unreasonable error or delay by an officer or employee of respondent (acting in his or her official capacity) in performing a ministerial or managerial act.

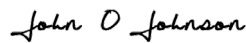
Appellants claim to have detrimentally relied on their accountant in the preparation and filing of both their federal and state personal income tax returns for 2016. We infer that appellants’ position is that their accountant’s serious medical condition constitutes reasonable cause for the errors found in their returns. However, there is no reasonable cause exception to the imposition of interest on this basis. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.) While we acknowledge the difficulties experienced by taxpayers when a trusted advisor is lost, we find that those losses have no bearing on the imposition of interest. We conclude that appellants have not established any grounds for interest abatement as provided by statute, and we find none in the record.

HOLDING


Appellants have not shown that they are entitled to the abatement of interest.

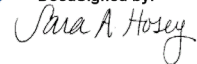
DISPOSITION

Respondent’s action in denying interest abatement for the 2016 tax year is sustained.

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John O. Johnson
Administrative Law Judge

We concur:

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Keith T. Long
Administrative Law Judge

DocuSigned by:

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Sara A. Hosey
Administrative Law Judge

Date Issued: 9/17/2021