

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:

A. K. MISHRA AND
A. MISHRA

) OTA Case No. 21067938
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OPINION

Representing the Parties:

For Appellants:

A. K. Mishra
A. Mishra

For Respondent:

Kristina Pehur, Graduate Student Assistant

N. DANG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, A. K. Mishra and A. Mishra (appellants) appeal an action by the Franchise Tax Board (respondent) denying their claim for refund of \$535.22 for the 2018 tax year.

We decide the matter based on the written record because appellants waived their right to an oral hearing.

ISSUE

Whether interest should be abated.

FACTUAL FINDINGS

1. For the 2018 tax year, appellants mistakenly assumed that their employer had withheld California income tax on their receipt of restricted stock unit compensation. Appellants realized their error after the payment deadline and paid the resulting tax due.
2. Consequently, respondent sent appellants a State Income Tax Balance Due Notice for the interest accruing on the additional tax from the original payment due date to the date of appellants’ payment.
3. Appellants paid the interest amount and filed a timely refund claim which respondent

denied. This timely appeal followed.

DISCUSSION

Appellants request that interest be abated because their late payment was due to an honest mistake, and that this was the first time they had failed to make a timely payment.

The imposition of interest is mandatory. (R&TC, § 19101(a).) Interest is not a penalty but is compensation for a taxpayer's use of money which should have been paid to the state. (*Appeal of Moy*, 2019-OTA-057P.)

To obtain relief from interest a taxpayer must qualify under one of the waiver provisions of R&TC sections 19104 (pertaining to unreasonable error or delay by respondent in the performance of a ministerial or managerial act), 19112 (pertaining to extreme financial hardship caused by significant disability or other catastrophic circumstance), or 21012 (pertaining to reasonable reliance on written advice from respondent). (*Appeal of Moy, supra.*)

Appellants have not alleged, and the record does not reflect, that any of these waiver provisions are applicable here. That appellants' tax deficiency was the result of an honest mistake does not prevent the accrual of interest. (*Appeal of Balch*, 2018-OTA-159P [interest accrues on a deficiency regardless of the reason for the deficiency].) Moreover, we have no authority to abate interest based on a taxpayer's history of timely payments. Accordingly, we find there is no basis for abating interest.

HOLDING

Interest should not be abated.

DISPOSITION

We sustain respondent’s action.

DocuSigned by:
Nguyen Dang
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Nguyen Dang
Administrative Law Judge

We concur:

DocuSigned by:
Natasha Ralston
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Natasha Ralston
Administrative Law Judge

DocuSigned by:
Tommy Leung
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Tommy Leung
Administrative Law Judge

Date Issued: 11/23/2021