

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of:  
**P. GUPTA**

) OTA Case No. 21047668  
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**OPINION**

Representing the Parties:

For Appellant:

P. Gupta

For Respondent:

Leoangelo C. Cristobal, Tax Counsel

N. RALSTON, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19331, P. Gupta (appellant) appeals Franchise Tax Board’s (respondent) deemed denial of appellant’s claim for refund of \$647.95 for the 2002 tax year.

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

**ISSUES**

1. Whether the Office of Tax Appeals (OTA) has jurisdiction to review the post-amnesty penalty, and if so, whether the post-amnesty penalty should be abated.
2. Whether the collection cost recover fee should be abated.
3. Whether interest should be abated for the 2002 tax year.

**FACTUAL FINDINGS**

1. Appellant filed a timely 2002 California tax return.
2. Subsequently, respondent received information from the IRS, indicating that the IRS had adjusted appellant’s 2002 federal return to include underreported pension/annuities income.

3. Based on the federal information, respondent issued a Notice of Proposed Assessment (NPA) that made corresponding adjustments to appellant's California return. The NPA proposed additional California tax of \$391, plus applicable interest.
4. Appellant did not protest the NPA, and it became final.
5. On May 15, 2006, respondent sent appellant a final notice informing appellant that respondent could impose a \$101 collection cost recovery fee if appellant failed to timely pay the amount due in response to the notice.
6. On March 26, 2019, respondent issued an Account Status Notice informing appellant that he had a balance due of \$937.95.<sup>1</sup>
7. Subsequently, respondent received a payment of \$937, which satisfied appellant's full balance due.<sup>2</sup>
8. Appellant filed a claim for refund on April 3, 2020, requesting a refund of the collection fees of \$101 and "interest" of \$546.95 for a total refund of \$647.95.<sup>3</sup>
9. Respondent did not issue a claim denial to appellant and thus the claim for refund is deemed denied pursuant to R&TC section 19331.<sup>4</sup>
10. Appellant then filed this timely appeal.

### DISCUSSION

Issue 1: Whether OTA has jurisdiction to review the post-amnesty penalty and, if so, whether the post-amnesty penalty should be abated.

R&TC sections 19730 through 19738 set forth the tax amnesty program. During the amnesty period, which ended March 31, 2005, the tax amnesty program applied to tax liabilities for taxable years beginning before January 1, 2003. (R&TC, § 19731) R&TC

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<sup>1</sup> This amount consisted of \$1,808 of additional tax and \$1,417 of adjustments, for a net additional tax due of \$391, an \$18.95 post-amnesty penalty, \$101 of collection fees, and \$427 of accrued interest.

<sup>2</sup> Respondent wrote off the remaining interest due.

<sup>3</sup> Appellant calculates this amount by subtracting the additional tax of \$391 from the total due of \$937.95 listed on the Account Status Notice, ( $\$937.95 - \$391 = \$546.95$ ) and then adding the collection fees of \$101 ( $\$546.95 + \$101 = \$647.95$ ). This is incorrect. If appellant is seeking a refund for the amounts due other than the additional tax of \$391, the claim for refund should be for \$546.95, consisting of the interest of \$427, collection fees of \$101 and the post-amnesty penalty of \$18.95. ( $\$427 + \$101 + \$18.95 = \$546.95$ .)

<sup>4</sup> Under R&TC section 19331, if respondent fails to act on a claim for refund within six months after the claim is filed, the taxpayer may consider the claim disallowed and may appeal the "deemed denial."

section 19777.5(a)(2) provides that a penalty shall be added to the tax for each taxable year for which amnesty could have been requested for amounts that become due and payable after the last day of the amnesty period for an amount equal to 50 percent of the interest on any final amount for the period beginning on the last day prescribed for payment of the tax and ending on the last day of the amnesty period. For amounts assessed after the last date of the amnesty period, the related penalty under the amnesty provisions is often referred to as the post-amnesty penalty.

Respondent has no discretion to determine whether the post-amnesty penalty should be imposed and there are no statutory exceptions for taxpayers who may have acted in good faith or had reasonable cause for failing to participate in the amnesty program. (R&TC, § 19777.5.) Additionally, R&TC section 19777.5(d) and (e) strictly limits our review of respondent's imposition of the post-amnesty penalty. The only situation that allows OTA to review a post-amnesty penalty assessment is on the denial of a claim for refund that a taxpayer filed on the basis that respondent erred in its computation of the penalty. (R&TC, § 19777.5(e).) Here, appellant contends that he is not sure whether he received the additional income, which resulted in the penalty, but due to the passage of time, he is unable to obtain this information. Appellant further argues that he was out of the country from March 2003 until 2019. Appellant states that he was unaware of the tax liability until his bank account was garnished in April 2019, after he returned to the United States. As appellant is not arguing that respondent erred in its computation of the penalty, we have no statutory basis to review respondent's proposed assessment of the post-amnesty penalty.

Issue 2: Whether the collection cost recovery fee can be abated.

R&TC section 19254(a)(1) requires respondent to impose a collection cost recovery fee when respondent notifies a taxpayer that the continued failure to pay an amount due may result in the imposition of the fee, and the taxpayer fails to timely pay the amount due in response to the notice. The amount of the fee is adjusted annually to reflect actual enforcement costs. There is no reasonable cause defense to the imposition of the fee; thus, our inquiry is limited to determining whether respondent complied with the statutory notice requirements for imposing the collection cost recovery fee. (*Appeal of Auburn Old Town Gallery, LLC*, 2019-OTA-319P).

Here, respondent issued a notice dated May 15, 2006, which informed appellant that failure to pay the liability may result in collection action and imposition of a collection cost recovery fee. The collection cost recovery fee was required to be imposed by R&TC

section 19254 because appellant failed to pay the liability after receiving notice that continued failure to pay the liability may result in imposition of the fee. Appellant did not make the payment until 2019. Therefore, respondent is not authorized to abate or modify this fee, and appellant has not shown that respondent did not comply with statutory notice requirements for imposing the collection cost recovery fee. Thus, we sustain respondent's imposition of the collection cost recovery fee.

Issue 3: Whether interest should be abated for the 2002 tax year.

The imposition of interest on a tax deficiency 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 Balch*, 2018-OTA-159P.) Interest accrues on a deficiency assessment regardless of the reason for the assessment. (*Ibid.*)

There is no reasonable cause exception to the imposition of interest. (*Appeal of Moy*, 2019-OTA-057P). Therefore, in order to obtain relief from interest, under the facts presented, a taxpayer must qualify under the provisions of either R&TC sections 19104, 21012, or 19112. R&TC section 19104 provides for an abatement when the interest is attributable to any unreasonable error or delay by an officer or employee of respondent when performing a ministerial or managerial act. These circumstances are neither alleged nor shown to be present here. The relief of interest under R&TC section 21012 is not relevant here, as respondent did not provide appellant with any written advice. R&TC section 19112 requires a taxpayer to make a showing of extreme financial hardship caused by a significant disability or other catastrophic circumstance. However, there is no evidence of these circumstances in the record. Appellant argues that interest should be abated because he was out of the country for a substantial amount of time and was not aware that the tax was due. However, as noted above, there is no reasonable cause exception for the imposition of interest and appellant has not shown that interest should be abated under the statutes at issue. Therefore, appellant has not demonstrated any grounds for the abatement of interest.

HOLDINGS

1. OTA does not have jurisdiction to review respondent’s proposed assessment of the post-amnesty penalty for the 2002 tax year, and appellant has not established that the penalty should be abated.
2. Appellant has not demonstrated that he is entitled to abatement of the collection cost recovery fee for the 2002 tax year.
3. Appellant has not demonstrated that he is entitled to abatement of interest for the 2002 tax year.

DISPOSITION

Respondent’s deemed denial of appellant’s claim for refund is sustained.

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*Natasha Kalston*  
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 Natasha Kalston  
 Administrative Law Judge

We concur:

DocuSigned by:  
*Susana Seyller* for  
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 Sheriene Anne Ridenour  
 Administrative Law Judge

DocuSigned by:  
*Keith T. Long*  
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 Keith T. Long  
 Administrative Law Judge

Date Issued: 2/1/2022