

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 21078252
J. FAWELL)
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OPINION

Representing the Parties:

For Appellant: J. Fawell
For Respondent: Camille Dixon, Tax Counsel
For Office of Tax Appeals: Michelle Huh, Tax Counsel

A. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, J. Fawell (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing interest of \$2,168.92 for the 2016 tax year.¹

Appellant has elected this appeal to be determined by the procedures of the Small Case Program.² The Opinion rendered in this matter cannot be treated as precedent for any other appeal before the Office of Tax Appeals (OTA). Appellant waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

ISSUE

Whether appellant is entitled to the abatement of interest.

FACTUAL FINDINGS

1. Appellant timely filed a California Resident Income Tax Return (Form 540).

¹ The Notice of Action (NOA) shows that FTB assessed additional tax of \$10,472 and interest of \$2,168.92. The NOA also notes that appellant made a payment of \$12,202, and FTB received that payment on June 2, 2021. On appeal, appellant concedes to the additional tax and requests abatement of interest only.

² The provisions of the Small Case Program are found at California Code of Regulations, title 18, section 30209.1, effective March 1, 2021.

2. Subsequently, FTB received information from the IRS, in the form of a CP2000, indicating that the IRS had adjusted appellant's 2016 federal return by including unreported pension or annuity income of \$141,347, unreported other income of \$8,889, and unreported interest income of \$839.
3. Based on the federal information, FTB issued a Notice of Proposed Assessment (NPA) that made corresponding adjustments to appellant's 2016 Form 540 by increasing appellant's California taxable income by \$151,075. The NPA proposed additional tax of \$10,472, plus applicable interest.
4. Appellant protested the NPA, stating that he understood that the additional tax was due but requested the abatement of penalties and interest because the additional income arose from an inheritance from his mother's sudden and untimely passing. He contended that he had received advice that the inheritance was not taxable and used the inheritance to purchase a home. He further stated that paying the NPA amount would place him in extreme financial hardship, especially with "all the ramifications of COVID-19."
5. FTB acknowledged receiving appellant's protest letter and explained that the NPA did not assess any penalties. FTB explained that to abate interest, the NPA must first be affirmed before it could review the abatement request. FTB informed appellant that if he has an IRS document that shows that the IRS has reduced or canceled its assessment, he should send FTB a copy of the document so that FTB may reduce or cancel the NPA. FTB requested a response from appellant within 30 days.
6. On June 2, 2021, appellant remitted a payment of \$12,200 to FTB.
7. After receiving no further information from appellant, FTB issued a Notice of Action, affirming the NPA.
8. This timely appeal followed.

DISCUSSION

Imposing interest on a tax deficiency is mandatory. (R&TC, § 19101(a).) Interest is not a penalty but is compensation for the taxpayer's use of money after it should have been paid to the state, and it can only be abated in certain limited situations when authorized by law. (*Appeal of Moy*, 2019-OTA-057P.) There is no reasonable cause exception to the imposition of interest. (*Ibid.*)

Appellant contends that he filed his deceased mother's taxes in 2016 in error and was unaware that omitting his inheritance on his tax return was incorrect. Appellant concedes to the additional tax assessed but requests that the accrued interest be waived due to the delayed notice.

To obtain interest abatement, appellant must qualify under one of the following three statutes: R&TC sections 19104, 19112, or 21012. 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. R&TC section 21012 does not apply because appellant does not allege, and the evidence does not show, that he relied on any written advice requested of FTB.

R&TC section 19112 provides that interest may be waived for any period for which FTB determines that an individual "demonstrates [an] inability to pay that interest solely because of extreme financial hardship caused by significant disability or other catastrophic circumstance." This statutory language requires a showing that appellant is unable to pay the interest, which means that the interest must be unpaid. Unlike R&TC section 19104, R&TC section 19112 does not provide OTA with jurisdiction to review FTB's determination with respect to the abatement of interest. (See R&TC, § 19104(b)(2).) Even if OTA had such jurisdiction, appellant does not qualify for the abatement of interest under R&TC section 19112, because he already paid a portion of the interest.³ Additionally, appellant has not established that he was unable to pay the remaining unpaid interest due to "extreme financial hardship caused by significant disability or other catastrophic circumstance." (R&TC, § 19112.) Thus, appellant has not demonstrated that he is entitled to interest abatement.

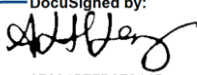
³ Appellant's June 2, 2021 payment of \$12,200 can be applied to the additional tax of \$10,472, listed on the NOA. The remaining payment amount is applied to a portion of the outstanding interest.

HOLDING

Appellant is not entitled to the abatement of interest.

DISPOSITION

FTB's action is sustained.

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Andrea L.H. Long
Administrative Law Judge

Date Issued: 2/18/2022