

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:

B. DUBE

) OTA Case No. 21067904
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OPINION

Representing the Parties:

For Appellant:

B. Dube

For Respondent:

Kristina Pehur, Graduate Student Assistant

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, Barbara Dube (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$590, plus interest, for the 2017 taxable year.

Although this matter was scheduled for an oral hearing, appellant subsequently waived that right; therefore, this appeal is being decided based on the written record.

ISSUE

Is appellant entitled to a waiver of interest?

FACTUAL FINDINGS

1. Appellant filed her 2017 personal income tax return (Form 540) claiming an already expired¹ Ridesharing Credit carryover of \$590.
2. FTB denied the Ridesharing carryover credit and issued appellant a Notice of Proposed Assessment (NPA) for the \$590, plus interest. FTB subsequently issued a Notice of Action affirming its NPA.

¹ Former R&TC sections 17053 and 17053.1 sunset in 1995.

3. Appellant does not deny that the \$590 Ridesharing carryover credit is inapplicable,² but asserts she should not be charged for interest.

DISCUSSION

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.)

There is no reasonable cause exception to the imposition of interest. 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 the written advice of a legal ruling by respondent's chief counsel). (*Appeal of Moy*, *supra*.) Appellant has not alleged, and the record does not reflect, that any of these waiver provisions are applicable here.

Appellant argues that since her 2017 Form 540 reflected an overpayment of \$711 which was refunded to her by FTB, no interest is owed by her. However, appellant overstated her credits, thereby understating her tax liability. Appellant's 2017 Form 540 showed a tax liability of \$882 and \$1,593 in withholdings, resulting in a \$711 overpayment. But that \$711 overpayment was overstated because of the disallowed \$590 Ridesharing carryover credit – i.e., without the disallowed \$590 Ridesharing carryover credit, appellant's tax liability was \$1,472, not \$882. As a result of appellant's error, she underpaid the tax that was due with her return and interest was correctly applied thereto. Accordingly, we find there is no basis for waiving interest.

² Appellant contends she paid back the \$590 but sent her payment to the IRS, and is waiting for the IRS to return the \$590 back to her before paying FTB.

HOLDING

Appellant is not entitled to a waiver of interest.

DISPOSITION

FTB’s action is sustained.

DocuSigned by:
Tommy Leung

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Tommy Leung
Administrative Law Judge

We concur:

DocuSigned by:
Josh Aldrich

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Joshua Aldrich
Administrative Law Judge

DocuSigned by:
John O Johnson

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John O. Johnson
Administrative Law Judge

Date Issued: 4/12/2022