

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of:

**J. KAIN**) OTA Case No. 21047629  
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)**OPINION**

Representing the Parties:

For Appellant:

J. Kain

For Respondent:

Gi Jung Nam, Tax Counsel

A. WONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, J. Kain (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing \$3,379 of additional tax and applicable interest for the 2016 tax year.<sup>1</sup>

Appellant waived her right to an oral hearing, so OTA decide this matter based on the written record.

**ISSUE**

Whether appellant has established that additional interest should be abated.

**FACTUAL FINDINGS**

1. Appellant timely filed a California Resident Income Tax Return for the 2016 tax year.
2. On March 11, 2020, FTB issued to appellant a Notice of Proposed Assessment (NPA) for additional tax and interest. Enclosed with the NPA was an FTB 7275 (*Personal Income Tax Notice of Proposed Assessment Information*) publication, which stated, “Filing a protest will not stop the accrual of interest.”
3. On April 20, 2020, FTB received appellant’s protest of the NPA.

<sup>1</sup> On appeal, appellant is only requesting the abatement of interest for the period from April 20, 2020, through April 21, 2021. FTB conceded to abate interest for the period from October 21, 2020, until December 7, 2020. As a result, the only issue remaining in dispute is \$144.57 of accrued interest for the periods from April 20, 2020, through October 20, 2020, and from December 7, 2020, through April 21, 2021.

4. On December 7, 2020, FTB assigned appellant's protest to its audit staff.
5. On December 14, 2020, FTB called appellant, but appellant did not answer.
6. On January 28, 2021, FTB mailed correspondence to appellant, acknowledging her protest, affirming its position, and requesting a response within 30 days.
7. On February 8, 2021, appellant called FTB regarding the denial of her protest and requested the balance due. FTB advised appellant of the following: (1) the assessment had not yet become final; (2) once final, FTB would send a billing notice; and (3) appellant could pay anytime.
8. On February 16, 2021, FTB called appellant, but appellant did not answer or provide a means to leave a voicemail message.
9. On April 1, 2021, FTB issued to appellant a Notice of Action (NOA) affirming the NPA.
10. Appellant paid off the additional tax and interest by April 21, 2020, and appealed to the Office of Tax Appeals (OTA), requesting abatement of interest accrued from April 20, 2020, through April 21, 2021.<sup>2</sup>

#### DISCUSSION

If FTB assesses additional taxes, interest accrues on the additional taxes from the original payment due date, without regard to any extension, until the date paid. (R&TC, § 19101(a) & (b)(1).) Interest is not a penalty, but is compensation for a taxpayer's use of money after it should have been paid to the state. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.) Interest accrues on a deficiency assessment regardless of the reason for the assessment. (*Appeal of Balch*, 2018-OTA-159P.) There is no reasonable cause exception to the imposition of interest, and interest is mandatory except where abatement is authorized under the law. (*Appeal of Moy*, 2019-OTA-057P.)

On appeal, appellant offers two reasons why the interest accrued from April 20, 2020 (the date FTB received her protest), through April 21, 2021 (the date appellant paid off the additional tax and interest), should be abated. First, appellant argues that FTB took nearly a year to respond to her protest, which is an unreasonable delay. Second, after FTB finally responded to her protest, appellant called FTB to see if she needed to do anything and claims that FTB informed

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<sup>2</sup> It is unclear whether the parties are treating appellant's payments as a deposit under R&TC section 19041.5 or if the matter was converted to an appeal from a denial of a claim for refund pursuant to R&TC section 19335. OTA will regard the amount at issue as a proposed assessment, but the holding and disposition of this appeal will equally apply to a denial of a claim for refund if R&TC section 19335 does apply.

her that she could just wait for the NOA, but it failed to add that interest continued to accrue even after her protest.<sup>3</sup>

FTB responds that, during the period from April 20, 2020, through April 21, 2021, it took an average of six months to assign a protest to audit staff due to workload constraints. FTB contends that this six-month delay was reasonable, but concedes to abate interest accrued from October 21, 2020 (six months after FTB received appellant's protest), until December 7, 2020 (the date FTB assigned appellant's protest to audit staff). As for the period from December 7, 2020, through April 21, 2021, FTB contends that there was no unreasonable delay because it was actively working to resolve appellant's protest during this time.

Regarding appellant's second argument, FTB contends that the information it provided during its February 8, 2021 call with appellant was accurate and cannot serve as the basis to abate interest.

Generally, to obtain relief from interest, taxpayers must qualify under at least one of the following three R&TC sections: 19104; 19112; or 21012.

#### R&TC section 19104

Under R&TC section 19104, FTB may abate all or a part of any interest on a deficiency to the extent that interest is attributable in whole or in part to any unreasonable error or delay committed by FTB in the performance of a ministerial or managerial act. OTA's jurisdiction over an appeal from FTB's denial of interest abatement is limited by statute to a review of FTB's determination for an abuse of discretion. (R&TC, § 19104(b)(2)(B).) To show an abuse of discretion, appellant must establish that, in refusing to abate interest, FTB exercised its discretion arbitrarily, capriciously, or without sound basis in fact or law. (*Appeal of GEF Operating, Inc., supra.*) Interest abatement provisions are not intended to be routinely used to avoid the payment of interest, so abatement should be ordered only where failure to abate interest would be widely perceived as grossly unfair. (*Appeal of Gorin, 2020-OTA-018P.*)

Here, FTB did not abate interest accrued during the six-month period from April 20, 2020, until October 20, 2020, because six months was the average amount of time FTB took to assign protests to audit staff during this period. OTA finds that this is a sound basis for

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<sup>3</sup> Even if FTB had failed to notify appellant about the continued accrual of interest on this telephone call, an FTB publication included with the NPA stated that interest continues to accrue even if a protest is filed, so OTA will not address this aspect of appellant's second argument further.

FTB's refusal to abate interest for this six-month period. FTB also did not abate interest accrued from December 7, 2020, until April 21, 2021, asserting that it was actively working on appellant's protest during this time. OTA's review of the record confirms this assertion. Accordingly, OTA concludes that FTB did not abuse its discretion in determining that it did not cause any unreasonable delay during these two periods and in denying appellant's request for interest abatement under R&TC section 19104.

#### R&TC section 19112

Under R&TC section 19112, FTB may waive interest for any period for which it determines that an individual or fiduciary demonstrates inability to pay that interest solely because of extreme financial hardship caused by significant disability or other catastrophic circumstance. However, OTA does not have the authority to review FTB's denial of a taxpayer's request for interest abatement based on extreme financial hardship. (*Appeal of Moy, supra.*) Even if OTA did have such authority, appellant has not alleged, and nothing in the record suggests, that she suffered any extreme financial hardship during the time at issue.

#### R&TC section 21012

Under R&TC section 21012, if a person's failure to make a timely return or payment is due to the person's reasonable reliance on written advice from FTB, the person may be relieved of the taxes assessed or any interest, additions to tax, and penalties added thereto, subject to numerous conditions.


Here, appellant did not seek written advice from FTB, nor did FTB provide any. Rather, appellant alleges that, on a February 8, 2021 phone call, FTB verbally advised her that she could wait for the NOA before taking any action. However, verbal advice does not suffice under R&TC section 21012. Accordingly, there is no basis to relieve interest under that statute.

HOLDING

Appellant has not established that interest should be abated for the following two periods:  
(1) April 20, 2020, to October 20, 2020; and (2) December 7, 2020, to April 21, 2021.

DISPOSITION

OTA modifies FTB’s action pursuant to its concession to abate interest for the period from October 21, 2020, through December 6, 2020. Otherwise, OTA sustains FTB’s action.

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Andrew Wong  
Administrative Law Judge

We concur:

DocuSigned by:  
*Kenneth Gast*  
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Kenneth Gast  
Administrative Law Judge

DocuSigned by:  
*Daniel Cho*  
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Daniel K. Cho  
Administrative Law Judge

Date Issued: 6/2/2022