



3. Appellants protested the NPA stating that the subtracted \$247,388 was nontaxable paid family leave benefits.
4. FTB sent a Notice of Action, affirming the NPA.
5. Appellants then filed this timely appeal.

### DISCUSSION

If any amount of the tax is not paid by the due date, interest is required to be imposed from the due date until the date the taxes are paid. (R&TC, § 19101(a).) Interest is not a penalty but is compensation for the taxpayer's use of money that should have been paid to the state. (*Appeal of Balch*, 2018-OTA-159P.) Imposition of interest is mandatory, and it can only be abated in certain limited situations when authorized by law. (R&TC, § 19101(a); *Appeal of Balch*, *supra*.) There is no reasonable cause exception to the imposition of interest. (*Appeal of Moy*, 2019-OTA-057P.) The Office of Tax Appeals has jurisdiction to determine whether appellants are entitled to the abatement of interest under R&TC sections 19104 and 21012. (*Ibid.*) R&TC section 21012 does not apply as FTB did not provide appellants with any requested written advice.

Appellants make a general argument that FTB took too long to send the NPA to them and thus the interest accruing was unfair. Federal authority makes it clear the mere passage of time does not establish an unreasonable error or delay. (*Ibrahim v. Commissioner*, T.C. Memo. 2011-215.)<sup>2</sup> Also, FTB does not have the discretion to abate interest prior to when it has first contacted the taxpayer in writing with respect to that deficiency or payment. (R&TC, § 19104(b)(1).) Further, to show that the interest accrual is attributable to the tax agency, the taxpayer must show that the tax liability would have been paid earlier but for the error or delay. (*Hull v. Commissioner*, T.C. Memo. 2014-36; *Paneque v. Commissioner*, T.C. Memo. 2013-48.) Here, FTB prepared and sent its NPA about three years after the filing deadline, which is well within the applicable statute of limitations as set forth by California law. (See R&TC, § 19057.) Furthermore, interest accruing due to protest and appeal processes initiated by appellants cannot

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<sup>2</sup> While the Revenue and Taxation Code does not define what is meant by an “unreasonable error or delay” or “a ministerial or managerial act,” the same language does appear in R&TC section 19104(a)(1), California's interest abatement provision for unreasonable error or delay. This section applies the same standard and uses substantially identical language as Internal Revenue Code section 6404(e), which is the comparable federal statute authorizing interest abatement for unreasonable error or delay. Therefore, it is appropriate to look to federal authority for guidance. (*Douglas v. State* (1948) 48 Cal.App.2d 835, 838; *Appeal of Kishner* (99-SBE-007) 1999 WL 1080250.)


be considered as significant error and delay. (R&TC, § 19104(a)(1), (b)(1); *Appeal of Gorin*, 2020-OTA-018P.) A review of the timeline and record shows no unreasonable error or delay by FTB. Therefore, we find that interest cannot be abated.

HOLDING

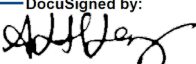
Appellants have not established a basis to abate interest.

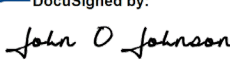
DISPOSITION

FTB’s action is sustained in full.

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Sara A. Hosey  
Administrative Law Judge

We concur:

DocuSigned by:  
  
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Andrea L.H. Long  
Administrative Law Judge

DocuSigned by:  
  
873D9797B9E04E1...  
John O. Johnson  
Administrative Law Judge

Date Issued: 9/16/2022