OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **R. SEN**	OTA Case No. 21088352

OPINION

Representing the Parties:

For Appellant: R. Sen

For Respondent: Gi Jung Nam, Tax Counsel

For Office of Tax Appeals: Nguyen Dang, Tax Counsel III

M. GEARY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, R. Sen (appellant) appeals an action by Franchise Tax Board (respondent) proposing additional tax of $1,218, plus applicable interest, for the 2017 tax year.

Appellant has elected to have this appeal determined pursuant to the procedures of the Small Case Program, including the assignment of a single administrative law judge and this Opinion's ineligibility for precedential consideration.[1] This matter is being decided based on the written record because appellant waived the right to an oral hearing.

ISSUE

Was respondent's denial of appellant's request for interest abatement an abuse of discretion?

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

FACTUAL FINDINGS

1. Appellant's employer withheld $13,096 (rounded) for California income tax for the 2017 tax year. This was the only state or local income tax (SALT[2]) paid by appellant for the 2017 tax year prior to filing income tax returns for that year.
2. Appellant's U.S. Individual Income Tax Return (Form 1040) for 2017 claimed itemized deductions totaling $19,231. Appellant included in those deductions a SALT deduction totaling $14,094, $998 more than appellant had paid (through withholdings).
3. Appellant computed and reported California itemized deductions for the 2017 tax year equal to the federal itemized deductions of $19,231 with no California adjustments. Appellant claimed and received a $700 refund.
4. Respondent thereafter obtained a copy of appellant's 2017 Form 1040 and learned that appellant's federal itemized deductions included a SALT deduction of $14,094.[3] California does not allow a SALT deduction.
5. On November 19, 2020, respondent issued a Notice of Proposed Assessment (NPA) to appellant for the 2017 tax year. The NPA indicates that respondent computed the additional tax by adding the $14,094 disallowed SALT deduction to the originally reported taxable income, determined that $13,707 tax was due on that sum, gave appellant credit for $12,396 tax paid, and proposed to assess additional tax of $1,311, plus interest.
6. On December 7, 2020, appellant protested the NPA, claiming entitlement to an unspecified, additional refund.
7. By letter to appellant dated April 6, 2021, respondent informed appellant that SALT (and mortgage insurance premiums) were not allowable California deductions. The letter went on to explain that the $19,231 in itemized deductions claimed on the Form 1040 must be reduced by the $13,094 SALT amount for the Form 540.[4]

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[2] The Acronym SALT generally refers to all state and local taxes that are deductible (currently up to $10,000) on federal returns. We use it here to refer only to state and local income taxes.

[3] The partial copy of the Form 1040 that was attached to appellants Form 540 did not include information regarding the SALT deduction.

[4] Appellant had actually paid SALT totaling $13,096.

8. On August 4, 2021, respondent issued a Notice of Action (NOA) to appellant. Instead of adding the disallowed SALT deduction of $14,094 to reported taxable income, as it had for its NPA calculation, respondent added $13,094 to recalculate the adjustment, which reduced the additional tax amount to $1,218, plus interest.[5] The NOA otherwise affirmed the NPA. This timely appeal followed.

9. Appellant concedes the proposed additional tax amount. The only relief appellant seeks in this appeal is the abatement of interest that accrued during the approximately four months from the December 7, 2020 protest to respondent's April 6, 2021 protest response letter.

DISCUSSION

The imposition of interest is mandatory and accrues on a tax deficiency regardless of the reason for the underpayment. (R&TC, § 19101(a); *Appeal of Balch,* 2018-OTA-159P.) "Interest is not a penalty but is compensation for the taxpayer's use of money which should have been paid to the state." (*Ibid*.) However, respondent may abate interest to the extent that the interest is attributable in whole or in part to any unreasonable error or delay by respondent's officers or employees in performing a ministerial or managerial act. (R&TC, § 19104(a)(1).)

Where respondent has denied the taxpayer's request for interest abatement, the Office of Tax Appeals, as the successor to the State Board of Equalization (Gov. Code, § 15672(a)), may nevertheless order an abatement if it is determined that respondent abused its discretion in denying that request. (R&TC, § 19104(b)(2)(B).) To demonstrate that respondent abused its discretion in refusing to abate interest, the taxpayer must establish that respondent exercised its discretion arbitrarily, capriciously, or without sound basis in fact or law. (*Appeal of Gorin*, 2020-OTA-018P (*Gorin*).) Interest abatement should not be used routinely to avoid the payment of interest, but rather, only in situations "where the failure to abate interest would be widely perceived as grossly unfair." (*Ibid.* citing *Lee v. Commissioner* (1999) 113 T.C. 145, 149.)

[5] It is not clear why respondent made this adjustment. It appears that the NPA correctly calculated the additional tax due. According to appellant's W-2 and Form 540, appellant's employer withheld $13,096 for state income taxes. There is no evidence that appellant paid more than that prior to filing the Form 540. Yet, appellant included a $14,094 SALT deduction on the federal return ($998 more than appellant was entitled to claim). Therefore, when appellant's adjusted gross income was carried over to the Form 540 without the required California adjustments, appellant's taxable income was understated by $14,094, regardless of how much appellant actually paid in SALT.

Appellant argues that interest should be abated because it took respondent an unreasonable period of time to issue a written response to appellant's protest. Appellant asserts that this unreasonable delay prevented appellant from timely amending appellant's 2017 Form 1040, which caused financial loss to appellant.

The evidence does not establish unreasonable delay by respondent. Respondent submitted a sworn declaration, which states that, due to workload constraints, assignments of protests generally took as long as six months after a protest was filed. OTA considered similar evidence of workload constraints in *Gorin*, *supra*, when it held that a protest assignment within six months was reasonable; and, during the periods of time under consideration in this appeal, FTB was dealing with the additional complication of the COVID pandemic, which was raging in late 2020. Considering the circumstances, it was not unreasonable for respondent to take almost four months to respond to appellant's protest. Consequently, respondent's denial of appellant's request for abatement of interest was not an abuse of discretion. Although this finding is dispositive, appellant's other argument concerning the consequences of the four-month delay will be addressed below.

The evidence also does not show that the timing of respondent's reply to appellant's protest prevented appellant from amending the Form 1040. Appellant claimed a SALT deduction on the Form 1040 that was $998 more than appellant was entitled to claim. Appellant has not explained how that error occurred, but it was clearly appellant's error, and it would have been obvious to appellant because the correct amount was shown on appellant's W-2. It was not respondent's responsibility to bring the error to appellant's attention.

Furthermore, the claim that appellant suffered financial loss as a result of not correcting the Form 1040 is not supported by the evidence. As already stated, the error on Form 1040 was in appellant's favor. If appellant had filed an amended return, appellant's taxable income would have been $998 *higher* and appellant's tax liability would have been proportionately higher. There is no evidence that filing an amended Form 1040 would have been to appellant's financial benefit.

HOLDING

Respondent did not abuse its discretion in refusing to abate interest.

DISPOSITION

Respondent's action is sustained.

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Michael F. Geary
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Michael F. Geary
Administrative Law Judge

Date Issued: 8/31/2022