

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:

C. LYMN AND
J. CHENG

) OTA Case No. 220410128
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OPINION

Representing the Parties:

For Appellants: C. Lymn and J. Cheng

For Respondent: Dawn Casey, Associate Operation
Specialist

J. LAMBERT, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, C. Lymn and J. Cheng (appellants) appeal an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$3,378, plus interest, for the 2017 tax year.¹

Appellant waived the right to an oral hearing. Therefore, this appeal is decided based on the written record.

ISSUE

Whether interest should be abated for the 2017 tax year.

FACTUAL FINDINGS

1. Appellants timely filed a joint 2017 California Resident Income Tax Return (Form 540).
2. FTB subsequently received federal information showing that the IRS adjusted appellants' federal return and assessed additional federal tax.
3. Based on the federal information, FTB issued a Notice of Proposed Assessment (NPA) on December 4, 2020, that made adjustments to appellants' California taxable income

¹ Appellants concede the additional tax and only dispute the imposition of interest. Therefore, the proposed additional tax will not be discussed in this Opinion.

that corresponded to the federal adjustments, and proposed additional tax of \$3,378, plus interest.²

4. Appellants timely protested the NPA, and FTB affirmed the NPA in a Notice of Action dated March 23, 2022.
5. This timely appeal followed.³

DISCUSSION

Issue 1: Whether interest should be abated for the 2017 tax year.

The imposition of interest is mandatory. (R&TC, § 19101(a); *Appeal of Moy*, 2019-OTA-057P.) Interest is charged from the due date of the tax payment to the date the tax is paid. (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. (*Appeal of Moy, supra.*) There is no reasonable cause exception to the imposition of interest and interest can only be waived in certain limited situations when authorized by law. (*Ibid.*)

To obtain relief from interest, a taxpayer must qualify under R&TC sections 19104 (unreasonable error or delay), 19112 (extreme financial hardship), or 21012 (reasonable reliance on FTB's written advice). (*Appeal of Moy, supra.*) The OTA has no jurisdiction to determine whether appellant is entitled to the abatement of interest under R&TC section 19112. (*Ibid.*) The relief of interest under R&TC section 21012 is not relevant here, because FTB did not provide appellant with any written advice. Under R&TC section 19104(a)(1), 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. (R&TC, § 19104(a)(1).) An error or delay can only be considered when no significant aspect of the error or delay is attributable to the taxpayer and after FTB has contacted appellant in writing with respect to the deficiency or payment. (R&TC, § 19104(b)(1).) The OTA has jurisdiction to determine whether FTB's denial of interest abatement under R&TC section 19104 was an abuse of discretion. (R&TC, § 19104(b)(2)(B); *Appeal of Moy, supra.*)

² The NPA states that the interest amount on the notice represents interest to December 4, 2020, which is the date the NPA was issued.

³ Appellant paid the amount due on March 29, 2022.

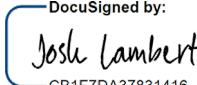
Appellants concede the additional tax and only dispute the imposition of interest. Appellants assert that they were not aware that interest would continue to accrue during the course of correspondence with FTB as they sought to clarify the reason for the additional tax. Appellants state that they would have paid the amount first while seeking an explanation for the additional tax to limit the accrual of interest. Appellants do not allege any error or delay by FTB. Rather, appellants contend that they made a mistake in assuming interest would stop accruing. In addition, the evidence does not suggest any delay or error by FTB. In addition, interest cannot be abated that relates to the period prior to when FTB contacted appellant in writing with respect to the deficiency; i.e., interest that accrued prior to the NPA issued on December 4, 2020. (See R&TC section 19104(b)(1).) Furthermore, there is no reasonable cause exception to the imposition of interest. (See *Appeal of Moy, supra.*) Accordingly, interest should not be abated.

HOLDING

Interest should not be abated for the 2017 tax year.

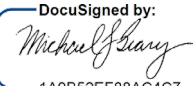
DISPOSITION

FTB's action is sustained.

DocuSigned by:

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Josh Lambert
Administrative Law Judge

We concur:

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Michael F. Geary
Administrative Law Judge

DocuSigned by:

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Natasha Ralston
Administrative Law Judge

Date Issued: 12/15/2022