

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:

N. MIHAI AND
J. MIHAI

) OTA Case No. 21129351
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OPINION

Representing the Parties:

For Appellants:

N. Mihai and J. Mihai

For Respondent:

Christopher M. Cook, Tax Counsel

O. AKOPCHIKYAN, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, N. Mihai and J. Mihai (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ refund claim of \$1,446 for the 2016 tax year.¹

Appellants waived the right to an oral hearing; therefore, Office of Tax Appeals (OTA) decides this matter based on the written record.

ISSUE

Whether appellants have shown they are entitled to abatement of interest.

FACTUAL FINDINGS

1. Appellants timely filed their joint 2016 California Resident Income Tax Return.
2. FTB subsequently learned that the IRS adjusted appellants’ 2016 income and deductions and issued a Notice of Proposed Assessment (NPA) on September 29, 2020, reflecting the federal adjustments.
3. Appellants timely protested the NPA and made a full payment of the additional tax, which FTB received on December 11, 2020.

¹ Appellants requested a refund of \$1,445.12, the amount reflected on the Notice of Action, but on appeal, FTB states the refund claim is actually \$1,446.00 because that is the amount appellants paid.

4. FTB issued a Notice of Action (NOA) on December 10, 2021, affirming the NPA. The NOA calculates interest to December 10, 2021, and does not reflect appellants' full payment of the additional tax.²
5. Appellants paid the interest amount reflected on the NOA on December 17, 2021, and timely filed an appeal with OTA seeking a refund of the interest amount only.

DISCUSSION

Interest generally must be assessed from the date a payment is due through the date that it is paid. (R&TC, § 19101.) Imposition of interest is mandatory. (*Appeal of Moy*, 2019-OTA-057P.) It is not a penalty; it is compensation for a taxpayer's use of money that should have been paid to the state. (*Ibid.*)

FTB properly assessed interest on appellants' additional tax liability. However, the NOA calculated interest to December 10, 2021, almost a year after FTB received appellants' full payment of the additional tax on December 11, 2020.³ Appellants paid the amount of interest reflected on the NOA. The record does not contain FTB's interest computation. However, to the extent appellants paid interest in excess of interest calculated to the full payment date, appellants are entitled to a refund of that amount.

With respect to abatement of interest calculated to the full payment date, appellants must qualify under R&TC section 19104, 19112, or 21012. (*Appeal of Balch*, 2018-OTA-159P.) R&TC section 19104 provides that FTB may abate interest if there has been an unreasonable error or delay by an FTB employee in the performance of a ministerial or managerial act. Here, appellants have not established any such errors or delays.

Under R&TC section 21012, interest may be abated if a taxpayer's failure to timely pay tax is due to the taxpayer's reasonable reliance on written advice from FTB. The record does not establish that appellants relied on written advice from FTB.

Lastly, under R&TC section 19112, FTB may waive interest for any period for which FTB "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

² The NOA acknowledges that the interest calculation "does not yet reflect [appellants'] payment" and that interest will ultimately be charged only up to the date the payment was received.

³ Appellants assert that they mailed the full payment on November 27, 2020. However, appellants have not established that the payment was postmarked on that date. Therefore, OTA need not decide whether the postmark date or the receipt date determines when appellants made full payment of the tax.

circumstance.” (R&TC, § 19112.) Appellants requested abatement of interest on the basis that they suffered a “catastrophic financial situation” due to COVID-19 and J. Mihai’s health condition. FTB denied the request. While OTA is sympathetic to appellants’ circumstances, OTA does not have jurisdiction to decide whether FTB abused its discretion in denying appellants’ interest abatement request under R&TC section 19112. (*Appeal of Moy, supra.*)

Accordingly, OTA finds no authority to abate the amount of interest calculated to the full payment date.

HOLDING

Appellants have not shown they are entitled to abatement of interest calculated to the full payment date. However, appellants are entitled to a refund of any amount paid in excess of interest calculated to the full payment date.

DISPOSITION

Appellants are entitled to a refund of any amount paid in excess of interest calculated to the full payment date, as FTB acknowledges in its NOA. FTB’s action is otherwise sustained.

DocuSigned by:
Ovsep Akopchikyan
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Ovsep Akopchikyan
Administrative Law Judge

We concur:

DocuSigned by:
Richard Tay
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Richard Tay
Administrative Law Judge

DocuSigned by:
Asaf Kletter
D17AEDDCAAB045B...
Asaf Kletter
Administrative Law Judge

Date Issued: 2/3/2023