

FACTUAL FINDINGS

1. Appellant timely filed a joint 2016 California tax return² reporting tax due and timely submitted payment for the reported balance.
2. Subsequently, FTB received information that the IRS audited appellant's 2016 joint federal tax return and made adjustments to appellant's income based on taxable pensions/annuities distributions received by appellant and/or his spouse.
3. Based on the information provided by the IRS, FTB made corresponding adjustments to appellant's 2016 California tax return. FTB increased appellant's taxable income and issued a Notice of Proposed Assessment (NPA), dated February 13, 2020, to appellant. The NPA showed proposed additional tax of \$9,789, plus interest.
4. Appellant protested the NPA, explaining that his wife had passed away in August 2016. Appellant stated that he did not know what his wife had done with their retirement funds, and that after she passed away, his tax preparer did not alert him to roll an annuity over into a new account. Appellant expressed that he was willing to pay the additional tax that resulted and asked that the interest amount be waived.
5. In response to appellant's protest, FTB sent appellant a Notice of Action dated May 26, 2020, stating that FTB affirmed the NPA, because appellant's protest did not indicate that he disagreed with the adjustments shown on the NPA.
6. Appellant made a payment of \$11,300.72 on June 4, 2020, on his 2016 tax year account, and requested an abatement and refund of the interest paid in the amount of \$1,511.72.³
7. Appellant then filed this timely appeal.

DISCUSSION

Tax is due on the original due date of the tax return without regard to any filing extension. (R&TC, § 19001.) Imposing interest is mandatory, and FTB cannot abate interest except where authorized by law. (R&TC, § 19101(a); *Appeal of Balch*, 2018-OTA-159P.) Interest is not a penalty; it is compensation for the use of money. (*Appeal of Balch*, *supra*.) There is no reasonable cause exception to the imposition of interest. (*Appeal of Gorin*, 2020-

² Appellant filed a joint 2016 return with his spouse who passed away in August of 2016. This appeal was filed solely by appellant.

³ This payment of the balance due for the 2016 tax year account converted this appeal from an appeal of the proposed assessment to an appeal of a denial of a claim for refund.

OTA-018P.) To obtain relief from interest, a taxpayer must qualify under the provisions of R&TC sections 19104, 19112, or 21012.⁴ (*Appeal of Moy*, 2019-OTA-057P.)

Appellant appears to make a reasonable cause argument in support of his appeal. However, the law does not allow a reasonable cause exception to the imposition of interest. (*Appeal of Gorin, supra.*) Appellant does not allege that any of the three statutory provisions for interest abatement apply to the facts of this case; and based on the arguments presented and the evidence in the record, OTA concludes that none of these statutory provisions apply. Therefore, appellant has not shown that he is entitled to interest abatement.

HOLDING

Appellant has not established a basis for the abatement of interest.

DISPOSITION

FTB’s action denying appellant’s claim for refund is sustained.

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Amanda Vassigh
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Amanda Vassigh
Administrative Law Judge

We concur:

DocuSigned by:
Teresa A. Stanley
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Teresa A. Stanley
Administrative Law Judge

DocuSigned by:
Natasha Ralston
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Natasha Ralston
Administrative Law Judge

Date Issued: 2/23/2023

⁴ Under R&TC section 19104, FTB is authorized to abate or refund interest if there has been an unreasonable error or delay in the performance of a ministerial or managerial act by an employee of FTB. R&TC section 21012 may apply when there has been reliance on written advice requested of FTB. Appellant does not allege any unreasonable error or delay by FTB or that he relied upon written advice from FTB. Finally, OTA does not have jurisdiction to review FTB’s denial of a taxpayer’s request for waiver of interest due to extreme financial hardship pursuant to R&TC section 19122. (*Appeal of Moy, supra.*)