

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 221011700
S. SHIEKH)
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OPINION

Representing the Parties:

For Appellant: S. Shiekh
For Respondent: Dawn Casey, Assoc. Operations Specialist

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, S. Shiekh (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$3,702 and applicable interest for the 2018 taxable year.

Appellant elected to have this appeal determined pursuant to the procedures of the Small Case Program. Those procedures require the assignment of a single administrative law judge. (Cal. Code Regs., tit. 18, § 30209.1.) Appellant waived the right to an oral hearing; therefore, the Office of Tax Appeals (OTA) decides the matter based on the written record.

ISSUE

Has appellant established a basis for abatement or waiver of interest?¹

FACTUAL FINDINGS

1. Appellant, a California resident, filed a timely California income tax return reporting \$81,190 of her wages as nontaxable income to California.
2. On May 31, 2022, FTB issued a Notice of Proposed Action (NPA) adding the \$81,190 back into appellant’s California income and explaining that a California resident is taxed on all their income, including wages earned outside of California. FTB proposed

¹ Appellant concedes the additional tax proposed by FTB and is only requesting abatement of the interest on the proposed assessment.

additional tax of \$3,702 and interest of \$510.61. FTB suspended interest under R&TC section 19116 for the period, April 16, 2022, to June 15, 2022.² The NPA indicated that if there was a balance due 15 days from the date of the NPA, interest would continue to accrue beginning on that date.

3. On June 15, 2022, FTB received appellant's payment of \$4,212.91, which satisfied the additional tax plus interest through April 15, 2022.³ No additional interest had accrued as of June 15, 2022.
4. Appellant protested the NPA and requested that FTB abate the interest FTB proposed to assess.
5. FTB denied appellant's request for interest abatement and issued a Notice of Action affirming the NPA.
6. Appellant filed this timely appeal.

DISCUSSION

Interest must be assessed from the date a tax payment is due through the date that it is paid. (R&TC, § 19101.) Imposition of interest is mandatory; it is not a penalty but is compensation for appellant's use of money after it should have been paid to the state. (*Appeal of Moy*, 2019-OTA-057P.) To obtain waiver or abatement of interest, appellant must qualify under R&TC sections 19104, 19112, or 21012. Pursuant to R&TC section 19112, FTB may waive interest when a taxpayer is financially unable to pay interest "solely because of extreme financial hardship caused by significant disability or other catastrophic circumstance." OTA has previously held that it lacks jurisdiction to review FTB's denial of interest relief pursuant to R&TC section 19112. (*Appeal of Moy*, *supra*.)

R&TC section 21012 provides that if a taxpayer's failure to make a timely return or payment is due to the taxpayer's reasonable reliance on written advice from an employee of FTB, the taxpayer may be relieved of the taxes assessed or any interest, additions to tax, and

² R&TC section 19116(b) provides that if a taxpayer files a timely tax return and FTB fails to notify taxpayers of a deficiency within 36 months from the tax return's due date or filing date whichever is later, FTB will suspend interest for the period beginning 36 months after the tax return's due date or filing date whichever is later and ending 15 days after the issuance of the NPA.

³ Appellant's payment of \$4,212.91 on June 15, 2021, was treated as a tax deposit by FTB pursuant to R&TC section 19041.5. FTB states that it will apply this payment (effective June 15, 2021) to appellant's 2018 taxable year when the liability for the 2018 taxable year is final following resolution of this appeal.

penalties. Here, appellant does not allege receipt of any written advice from FTB, and OTA's record does not reflect that any written advice was given. Moreover, R&TC section 21012 only applies when a taxpayer has not timely filed a return or has made a late payment based on written advice from FTB. Here, appellant did not file a late return, and has not alleged that her late payment was based on the advice of an FTB employee who advised appellant that \$81,190 of her wages were not subject to California tax.

Lastly, R&TC section 19104 provides, in general, that FTB may abate interest if it is attributable in whole or in part to any unreasonable error or delay by an officer or employee of FTB in performing a ministerial or managerial act which occurred after FTB contacted the taxpayer in writing regarding the deficiency, provided no significant aspect of that error or delay is attributable to the taxpayer. OTA has jurisdiction to consider whether FTB's determination denying relief from interest was an abuse of discretion. (R&TC, § 19104(b)(2)(B); Gov. Code, § 15672(a).) The mere passage of time does not establish error or delay in performing a managerial act. (*Ibid.*)

Here, appellant seems to assert that FTB made an unreasonable error or delay by failing to send its NPA earlier than May 31, 2022, more than three years after appellant filed a California tax return.⁴ However, interest may only be abated for the period after FTB has contacted the taxpayer in writing regarding the proposed assessment. (R&TC, § 19104(b)(1).) FTB's first written contact to appellant regarding the proposed assessment was on May 31, 2022. Thus, any interest that accrued prior to this date is not eligible for interest abatement under R&TC 19104. In addition, FTB had until February 27, 2023, four years after appellant's 2018 tax return was filed, to issue an NPA. (R&TC, § 19057(a).) Thus, FTB was not required to send any notice of its proposed assessment to appellant prior to the date it issued the NPA, and sending the notice on May 31, 2022, does not constitute an unreasonable error or delay by FTB. For the remaining period of interest, June 1, 2022, to June 15, 2022, FTB already suspended interest under R&TC section 19116. Since appellant paid the amount shown on the NPA by

⁴ Appellant also asserts that she would have paid the liability had she been aware that interest would continue to accrue after the date of the NPA. FTB suspended interest for the period of April 16, 2022, through June 15, 2022, and appellant paid on June 15, 2022; thus, no additional interest has been charged following the issuance of the NPA.


June 15, 2022, no additional interest accrued on appellant’s account.⁵ Interest was properly imposed, and appellant has not established that any applicable statute allows for waiver or abatement of interest.

HOLDING

Appellant has not established a basis for waiver or abatement of interest.

DISPOSITION

FTB’s action is sustained.

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Teresa A. Stanley
Administrative Law Judge

Date Issued: 3/21/2023

⁵ Appellant asserts that FTB had stated it would reply to the filed protest within 90 days of receiving appellant’s protest, but FTB did not do so until 111 days later. However, because appellant satisfied the liability on June 15, 2022, no additional interest accrued after the May 31, 2022 NPA was issued.