

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 221011679
)
R. MONTES AND)
M. HERNANDEZ)
 _____)

OPINION

Representing the Parties:

For Appellants: R. Montes
 For Respondent: Leoangelo C. Cristobal, Tax Counsel

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, R. Montes and M. Hernandez (appellants) appeal an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$5,323, and applicable interest, for the 2017 taxable year.

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

ISSUE

Are appellants entitled to waiver or abatement of interest?¹

FACTUAL FINDINGS

1. Appellants sold California real property in 2017, and appellants' title company withheld, and on July 7, 2017, remitted to FTB estimated tax of \$5,927 based on appellants' sale proceeds.
2. Appellants filed a timely California Resident Income Tax Return for taxable year 2017 reporting total tax of \$160 and requesting a refund of \$5,767. On that return appellants

¹ Appellants acknowledge that they inadvertently deducted capital gains on their California tax return. As such, appellants do not dispute the additional tax, but have requested abatement or waiver of interest on appeal.

- subtracted from their adjusted gross income the capital gain from the sale of their California real property.
3. On May 10, 2018, FTB refunded appellants the \$5,767.
 4. FTB subsequently added back into appellants' California taxable income the capital gains from the sale of their California real property that were incorrectly deducted from appellants' federal adjusted gross income on their California tax return. Accordingly, FTB issued a Notice of Proposed Assessment (NPA) proposing additional tax of \$5,323, plus applicable interest.²
 5. Appellants requested waiver or abatement of interest, and FTB requested that appellants submit their interest abatement request in writing. Appellants did not respond, and FTB issued a Notice of Action affirming the NPA.
 6. This timely appeal followed.

DISCUSSION

If any amount of tax is not paid by the due date, interest is required to be imposed from the due date until the date the taxes are paid. (R&TC, § 19101(a).) Interest is not a penalty but is compensation for the taxpayer's use of money that should have been paid to the state. (*Appeal of Balch*, 2018-OTA-159P.) Imposition of interest is mandatory, and it can only be abated in certain limited situations when authorized by law. (R&TC, § 19101(a); *Appeal of Balch, supra*.) There is no reasonable cause exception to the imposition of interest. (*Appeal of Moy*, 2019-OTA-057P.) To obtain relief from interest, taxpayers must generally qualify under the provisions of R&TC sections 19104, 21012, or 19112.

The record in this appeal does not contain any evidence that interest was calculated incorrectly. Thus, appellants must show that they qualify for interest abatement under a relevant statute.

R&TC section 19104 provides for abatement when the interest is attributable to any unreasonable error or delay by an officer or employee of FTB when performing a ministerial or managerial act. These circumstances are neither alleged nor shown to be present here. The relief of interest under R&TC section 21012 does not appear to be relevant here because appellants have not alleged or shown that they reasonably relied on written advice from FTB. Lastly, OTA

² Appellants paid the \$5,323 on February 7, 2022, which FTB placed in suspense pending the resolution of this appeal.

does not have jurisdiction to review FTB's denial of interest waiver pursuant to R&TC section 19112. (*Appeal of Moy, supra.*)

Appellants argue that interest should be abated because FTB had the \$5,927 paid by the title company for nearly a year, and they would therefore be double taxed on it if interest is charged. Specifically, appellants question "how can [they] pay interest on the money FTB was holding and gaining interest on." Appellants note that the funds were sent by the title company to FTB on July 7, 2017, and FTB did not refund it until May 10, 2018.

When a title company withholds gain from the sale of a real property pursuant to R&TC section 18662, the withholding and required remittance to FTB is in the nature of an estimated tax payment. As such, amounts withheld and remitted are deemed to have been paid on the original due date for filing the tax return; here, on April 15, 2018. (R&TC, §§ 19002(c)(1), 19363.) When FTB grants a refund, interest is paid from the date of the overpayment to a date preceding the refund by not more than 30 days. (R&TC, § 19340(b).)

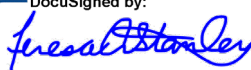
Appellants incorrectly prepared their tax return, resulting in a claimed refund of \$5,767. The estimated tax payment of \$5,927 withheld and remitted to FTB on July 7, 2017, was deemed paid by appellants on April 15, 2018. Since FTB refunded appellants' claimed refund less than 30 days after that date, no payment of interest to appellants was required. Appellants have pointed to no statute that would deem the estimated tax payment to have been paid on July 17, 2017, thereby requiring FTB to calculate interest from that date or offset interest charged to appellants. Therefore, appellants are not entitled to waiver of interest on the basis that FTB held their funds from July 7, 2017, to May 10, 2018.

HOLDING

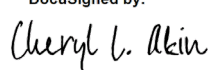
Appellants have not established that they are entitled to abatement or waiver of interest.

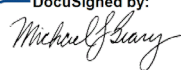
DISPOSITION

FTB’s action is sustained.

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Teresa A. Stanley
Administrative Law Judge

We concur:

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Cheryl L. Akin
Administrative Law Judge

DocuSigned by:

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Michael F. Geary
Administrative Law Judge

Date Issued: 4/21/2023