

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:

L. CHEN AND
H. TIAN

) OTA Case No. 220911422
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OPINION

Representing the Parties:

For Appellants:

L. Chen and H. Tian

For Respondent:

Ludi Zhu, Graduate Legal Assistant

E. LAM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, L. Chen and H. Tian (appellants) appeal an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$3,066.00, and \$579.28 in applicable interest, for the 2017 tax year.¹

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

ISSUE

Whether appellants are entitled to interest abatement.

FACTUAL FINDINGS

1. On April 8, 2018, appellants timely filed their joint 2017 California Resident Income Tax Return.
2. On July 27, 2021, FTB issued appellants a Notice of Proposed Assessment (NPA) increasing appellants’ taxable income, and proposing additional tax and \$553.28 in applicable interest. The accrued interest is for the period April 15, 2018, to April 15, 2021.

¹ On appeal, appellants no longer dispute the proposed additional tax; therefore, interest abatement is the sole issue in this matter.

3. On September 10, 2021, appellants protested the NPA, contending that the proposed assessment included nontaxable income.² Appellants requested that the proposed additional tax be reduced and that the accrued interest be abated.
4. On February 9, 2022, appellants received a Payment Information Detail letter (February 9, 2022 letter) from FTB indicating that as of the date of the letter, appellants had a zero balance due for the 2017 tax year.³
5. On August 22, 2022, FTB agreed with appellants that the NPA included nontaxable income and issued a Notice of Action (NOA) that reduced appellants' additional tax and reduced appellants' total applicable interest to \$579.28. The applicable interest consists of \$468.35 for the period April 15, 2018, to April 15, 2021, and \$110.93 for the period August 11, 2021, to August 22, 2022.
6. This timely appeal followed.
7. On appeal, appellants concede that they are liable for the additional tax, but request interest abatement.

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 imposed on taxpayers; it is compensation for the use of money after it should have been paid to the state. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.) There is no reasonable cause exception to the imposition of interest, and interest is mandatory except where abatement is authorized under the law. (*Appeal of Moy*, 2019-OTA-057P.)

As relevant to this appeal, under R&TC section 19104(a)(1), FTB may abate interest related to a proposed deficiency to the extent the interest is attributable in whole or in part to: (1) an unreasonable error or delay; (2) by an officer or employee of FTB acting in his or her official capacity; (3) in performing a ministerial or managerial act; and (4) which occurred after FTB contacted the taxpayer in writing regarding the proposed deficiency, provided no significant

² Appellants protested the NPA that \$5,977.15 of their wage is nontaxable third party sick pay, but did not dispute that the remaining income of \$32,970.85 is taxable. Appellants did not remit any payments towards the undisputed liability.

³ While an NPA is pending, such as during a protest, the proposed liability is not final. Therefore, the amount due on the February 9, 2022 letter did not reflect the proposed assessment since the NPA was not final as of the date of the letter.

aspect of that error or delay can be attributable to the taxpayer. (R&TC, § 19104(a)(1), (b)(1); *Appeal of Gorin*, 2020-OTA-018P.)

However, OTA’s jurisdiction in an interest abatement case is limited. OTA only reviews FTB’s determination for abuse of discretion. (R&TC, § 19104(b)(2)(B).) To show an abuse of discretion, taxpayers must establish that, in refusing to abate interest, FTB exercised its discretion arbitrarily, capriciously, or without sound basis in fact or law. (*Appeal of Gorin*, *supra*.) Interest abatement provisions are not intended to be routinely used to avoid the payment of interest, thus abatement should be ordered only “where failure to abate interest would be widely perceived as grossly unfair.” (*Ibid.*, quoting *Lee v. Commissioner* (1999) 113 T.C. 145, 149.)

Here, appellants concede that they owed additional taxes, but disagree that interest should be imposed. Appellants contend that after they protested the NPA on September 10, 2021, they called and received the February 9, 2022 letter from FTB indicating that there was no balance due on appellants’ account. It appears that appellants interpreted the February 9, 2022 letter to mean that FTB is not assessing any additional tax or applicable interest after they protested the NPA. However, FTB issued appellants an NOA on August 22, 2022, indicating additional tax and applicable interest are due. Therefore, appellants assert that the accrued interest on the NOA should be abated due to FTB’s delay of issuing its NOA on August 22, 2022, when appellants protested the NPA on September 10, 2021, and received the February 9, 2022 letter that there was no tax balance due on appellants’ account.

The R&TC does not define what is meant by an “unreasonable error or delay.” (R&TC, § 19104(a)(1).) However, R&TC section 19104(a)(1), California’s interest abatement provision for unreasonable error or delay, applies the same standard and uses substantially identical language as Internal Revenue Code section 6404(e), which is the comparable federal statute authorizing interest abatement for unreasonable error or delay. Therefore, it is appropriate to look to federal authority for guidance. (*Douglas v. State* (1948) 48 Cal.App.2d 835, 838; *Appeal of Kishner* (99-SBE-007) 1999 WL 1080250.)

Congress only intended abatement of interest in circumstances where the failure to do so would be widely perceived as grossly unfair. (*Franklin v. Commissioner*, T.C. Memo. 2008-13, citing H.R.Rep. No. 99–426, 1st Sess., p. 844 (1985) and Sen.Rep. No. 99–313, 2d Sess., p. 208 (1986).) Thus, the mere passage of time does not establish an unreasonable error or delay.

(*Ibrahim v. Commissioner*, T.C. Memo. 2011-215.) Further, to show that the interest accrual is attributable to the tax agency, the taxpayers must show that the tax liability would have been paid earlier but for the error or delay. (*Hull v. Commissioner*, T.C. Memo. 2014-36; *Paneque v. Commissioner*, T.C. Memo. 2013-48.)

Here, FTB imposed interest on two periods. For the first period, FTB imposed interest in the amount of \$468.35 from April 15, 2018, to April 15, 2021 (First Period). As stated above, R&TC section 19104(b)(1) provides that an error or delay can only be considered for purposes of interest abatement *after* FTB contacted appellants in writing with respect to the deficiency. Therefore, no interest may be abated for periods prior to FTB contacting appellants in writing with respect to that deficiency or payment. (See R&TC, § 19104(b)(1).) Here, FTB first contacted and issued appellants an NPA on July 27, 2021. However, appellants are disputing the interest assessed during the First Period, which is prior to July 27, 2021. The law is clear that no portion of the First Period is eligible for interest abatement because evidence in the record shows that there was no contact in writing by FTB prior to the First Period. As such, OTA finds that FTB did not abuse its discretion in disallowing interest abatement for the First Period and interest abatement is not applicable.

For the second period, FTB imposed interest in the amount of \$110.93 from August 11, 2021, to August 22, 2022 (Second Period). After FTB issued the NPA, appellants protested the NPA on September 10, 2021, and FTB issued appellants an NOA on August 22, 2022, revising its proposed assessment. Appellants assert that the interest from the Second Period should be abated. However, OTA does not find that the mere passage of time during the NPA's protesting period establishes an unreasonable delay by FTB. (See *Ibrahim v. Commissioner, supra.*) Additionally, appellants did not show that the tax liability would have been paid earlier but for an error or delay by FTB. (See *Hull v. Commissioner, supra.*) Appellants do not dispute that the revised proposed tax, as reflected on the NOA, is incorrect; nevertheless, appellants did not remit any payments towards that liability. Thus, there are no grounds that FTB abused its discretion when it denied appellants' request for abatement of interest for the Second Period, and appellants are not entitled to interest abatement.

HOLDING

Appellants are not entitled to interest abatement.

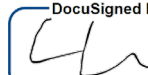
DISPOSITION

FTB's action is sustained.

DocuSigned by:
Eddy Y.H. Lam
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Eddy Y.H. Lam
Administrative Law Judge

We concur:

DocuSigned by:

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Andrew J. Kwee
Administrative Law Judge

DocuSigned by:
Sheriene Anne Ridenour
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Sheriene Anne Ridenour
Administrative Law Judge

Date Issued: 5/24/2023