

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
H. MILLS

) OTA Case No. 220911461
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OPINION

Representing the Parties:

For Appellant: H. Mills

For Respondent: Leoangelo C. Cristobal, Tax Counsel

E. LAM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, H. Mills (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$7,385.00, and \$1,074.63 in applicable interest, for the 2018 tax year.¹

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

ISSUE

Whether appellant is entitled to interest abatement.

FACTUAL FINDINGS

1. On April 9, 2019, appellant timely filed his 2018 California Resident Income Tax Return, reporting zero taxable income and tax due.
2. On June 3, 2022, FTB issued appellant a Notice of Proposed Assessment (NPA).
3. On September 6, 2022, FTB affirmed the NPA and issued a Notice of Action (NOA) to appellant. As relevant to this appeal, the NOA imposed \$1,074.63 in total applicable interest. The accrued interest is for two periods: April 15, 2019, to April 15, 2022, in the

¹ On appeal, appellant does not dispute the proposed additional tax or that interest abatement is the sole issue in this matter.

amount of \$1,019.19; and June 18, 2022, to September 6, 2022, in the amount of \$55.44. The NOA also indicated that, per a conversation on August 25, 2022, appellant agreed with the proposed assessment.

4. This timely appeal followed.
5. On appeal, appellant concedes that he is liable for the additional tax, but requests interest abatement.

DISCUSSION

If any amount of tax imposed by the Personal Income Tax Law 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 a taxpayer; 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 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 failure to abate interest for abuse of discretion. (R&TC, § 19104(b)(2)(B).) To show an abuse of discretion, a taxpayer 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.*)

R&TC does not define what is meant by an "unreasonable error or delay." 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 taxpayer 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 \$1,019.19 from April 15, 2019, to April 15, 2022 (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 appellant in writing with respect to the deficiency. Therefore, no interest may be abated for periods prior to FTB contacting appellant in writing with respect to that deficiency or payment. (See R&TC, § 19104(b)(1).) Here, FTB first contacted and issued appellant an NPA on June 3, 2022. However, appellant is disputing the interest assessed during the First Period, which predates June 3, 2022. The law is clear that no portion of the interest imposed for the First Period is eligible for abatement because there is no evidence in the record showing that FTB contacted appellant in writing prior to the First Period. As such, OTA finds that FTB did not abuse its discretion in failing to abate interest for the First Period and interest abatement is not applicable.

For the second period, FTB imposed interest in the amount of \$55.44 from June 18, 2022, to September 6, 2022 (Second Period). Appellant asserts that the interest from the Second Period should be abated. However, OTA does not find that the mere passage of time during the Second Period establishes an unreasonable delay by FTB. (See *Ibrahim v. Commissioner*, *supra*.) Furthermore, appellant 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*.) Thus, there are no grounds

for OTA to conclude that FTB abused its discretion in denying appellant’s request for abatement of interest for the Second Period, and appellant is not entitled to interest abatement.

HOLDING

Appellant is not entitled to interest abatement.

DISPOSITION

FTB’s action is sustained.

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Eddy Y.H. Lam
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Eddy Y.H. Lam
Administrative Law Judge

We concur:

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Andrew Wong
Administrative Law Judge

DocuSigned by:
John O Johnson
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John O. Johnson
Administrative Law Judge

Date Issued: 6/8/2023