OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **T. SIPOS**	OTA Case No. 220310052

OPINION

Representing the Parties:

For Appellants: T. Sipos

For Respondent: Noel Garcia-Rosenblum, Tax Counsel

M. GEARY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, T. Sipos (appellant) appeals an action by the Franchise Tax Board (respondent) proposing an accuracy-related penalty of $1,380, plus interest, for the 2016 tax year.[1]

This matter is being decided based on the written record because appellant waived an oral hearing.

ISSUES

1. Should the accuracy-related penalty be abated?
2. Should interest be abated?

FACTUAL FINDINGS

1. Appellant was a co-administrator of his mother's estate. On August 4, 2016, appellant executed a declaration under penalty of perjury that he would be paid $64,282 (rounded) on December 1, 2016, as a commission for his services as co-administrator.[2]

[1] Respondent also proposed additional tax of $6,900, but appellant does not dispute the additional tax.

[2] The declaration is IRS Form 4421, which is typically filed with the estate tax return.

2. On August 11, 2016, appellant's sister and co-administrator issued a substantial check to the U. S. Treasury on the account of their mother's estate to pay estate taxes due. Appellant was also named on that account as co-administrator.
3. On October 8, 2017, appellant timely filed a California Resident Income Tax Return for the 2016 tax year, reporting $10,304 in tax, exemptions and other credits totaling $4,723, total tax due of $5,581, and an overpayment of $3,123. Appellant self-reported an estimated tax penalty of $35 and applied the remainder ($3,088) to 2017 estimated taxes. Appellant did not include the co-administrator's commission in reported income.
4. Respondent accepted the return and reduced the estimated tax penalty from $35.00 to $19.45, which resulted in an overpayment of $15.55 that respondent refunded to appellant on October 10, 2017.
5. The IRS subsequently informed respondent that it had adjusted appellant's federal adjusted gross income (AGI) due to unreported income. On the basis of this information, respondent issued to appellant an April 19, 2021 Notice of Proposed Assessment (NPA), which increased appellant's California AGI by the amount of the unreported co-administrator's commission, which in turn resulted in a reduction of appellant's allowed medical expense deduction and miscellaneous deductions by $4,767 and $1,286, respectively, and an increase of appellant's itemized deduction limitation of $2,689, all resulting in a total tax of $12,481 and an additional tax (after deducting the $5,581 in tax reported in the return) of $6,900. Respondent also imposed the accuracy-related penalty and interest that is at issue here.
6. By letter dated June 18, 2021, appellant timely protested the NPA, stating that he was not aware of the federal adjustment and asking respondent to defer further action while appellant investigated further.
7. Having heard nothing further from appellant, respondent sent appellant a letter dated December 16, 2021, and included with the letter the information upon which the NPA had been based, as well as information indicating that appellant had agreed to the federal adjustments. The letter asked appellant to reply within 30 days and indicated that respondent would affirm the proposed assessment absent a timely reply.
8. On March 18, 2022, respondent issued a Notice of Action affirming its assessment.
9. This timely appeal followed.

DISCUSSION

Issue 1: Should the accuracy-related penalty be abated?

Internal Revenue Code (IRC) section 6662, incorporated by R&TC section 19164, provides for an accuracy-related penalty of 20 percent of the applicable underpayment. IRC section 6662(b) provides, in relevant part, that the penalty applies to the portion of the underpayment attributable to any substantial understatement of income tax. In general, a substantial understatement of tax exists if the understated amount exceeds the greater of 10 percent of the tax required to be shown on the return or $5,000.[3] (IRC, § 6662(d)(1).) An "understatement" is defined as the excess of the amount of tax required to be shown on the return for the tax year over the amount of tax shown on the return, reduced by any rebate.[4] (IRC, § 6662(d)(2).) The accuracy-related penalty does not apply to any portion of an underpayment if it is shown that there was reasonable cause for the underpayment and the taxpayer acted in good faith with respect to the underpayment. (IRC, § 6664(c)(1).)

Appellant does not dispute that there was a substantial understatement on the return, that the understatement was correctly calculated, or that respondent properly assessed the penalty based upon the information then available to it. Appellant acknowledges that the federal adjustment was the result of the co-administrator's commission, but he asserts that, while the commission was accrued, it was not paid to him by the attorney who handled his mother's estate. Appellant agreed to the federal adjustments but asserts here that he did not realize that the income had been omitted from his return until after both the federal and state returns for 2016 had been filed. In essence, appellant argues that he was distraught at the loss of both parents and simply did not realize that the omitted income had been earned, at least in part because it had not been paid. Appellant contends that he acted in good faith and that these circumstances constitute good cause for the understatement.

The record establishes that there was a substantial underpayment for the 2016 tax year and that appellant had actual knowledge of the unreported income prior to filing his 2016 tax return. The underpayment ($6,900) was greater than $5,000 and far exceeded 10 percent of the

[3] There are special rules for some taxpayers. (See, e.g., IRC, § 6662(d)(B), (C).)

[4] "Rebates" is defined in IRC section 6211(b)(2).

amount of tax that was actually due.[5] It therefore met the definition of "substantial underpayment. On August 4, 2016, appellant signed a declaration under penalty of perjury acknowledging that he would be paid the co-administrator's commission on December 1, 2016. Appellant has not submitted any corroborating evidence to show that he did not receive the commission in 2016. In addition, although appellant also signed a December 1, 2022 letter (to respondent) under penalty of perjury stating that his attorney was in possession of appellant's commission, the record does not establish that fact. The fact that appellant and his sister were both on the estate's checking account suggests that appellant and his sister, not the estate's attorney, controlled the assets of the estate. In any event, appellant has not established that the attorney controlled the assets and that he was not paid the commission in 2016.

The above facts are sufficient to demonstrate appellant's actual knowledge that the commission was reportable income for the 2016 tax year. Appellant's vague assertions to the contrary, unsupported by any persuasive evidence, are simply not enough to establish good cause. Therefore, OTA concludes that appellant has failed to establish good cause for abating the accuracy-related penalty. Consequently, there is no adequate factual or legal basis upon which to order abatement of that penalty.

Issue 2: Should interest be abated?

When a taxpayer fails to pay any amount of tax by the due date, the law requires respondent to impose interest, which accrues from the due date until the date the tax is paid. (R&TC, § 19101(a).) Interest assessed on a penalty accrues from the date of the notice or demand therefor to the date of payment.[6] (R&TC, § 19101(c)(2)(A).) When so imposed, interest is not considered a penalty; rather, it is considered compensation for the taxpayer's use of money that should have been paid to the state. (*Appeal of Moy*, 2019-OTA-057P.)

Interest can only be abated when the evidence establishes: extreme financial hardship (R&TC, § 19112); that the taxpayer reasonably relied on written advice from respondent (R&TC, § 21012); unreasonable error or delay by respondent's officer or employee while acting in an official capacity (R&TC, § 19104(a)(1)); that interest on a tax deficiency for which

[5] The amount required to be shown on the return was $12,481, and 10 percent of that amount is $1,248 (rounded).

[6] Interest accrues only if the penalty is not paid within 15 days from the date of the notice or demand. (R&TC, § 19101(c)(2)(A).)

respondent issued a proposed deficiency assessment was due to respondent's officer or employee being dilatory in performing a ministerial or managerial act while acting in an official capacity (R&TC, § 19104(a)(2)); or that the interest is on a deficiency based on a final federal determination, which included an abatement of interest pursuant to IRC section 6404(c) for the same period based as long as the error or delay occurred no later than the issuance of the final federal determination (R&TC, § 19104(a)(3)).[7]

Here, appellant does not base his claim to relief of interest on any of the grounds enumerated above. The only ground for relief appellant asserts is reasonable cause. There is no reasonable cause exception to the imposition of interest. (*Appeal of Moy*, 2019- OTA-057P.) Consequently, OTA denies the request for relief of interest.

HOLDING

The accuracy-related penalty and interest should not be abated.

DISPOSITION

Respondent's action is sustained.

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Michael F. Geary
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Michael F. Geary
Administrative Law Judge

We concur:

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Ovsep Akopchikyan
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Ovsep Akopchikyan
Administrative Law Judge

DocuSigned by:
3CADA62FB4864CB...
Andrew J. Kwee
Administrative Law Judge

Date Issued: 9/20/2023

[7] R&TC section 19101 is based on IRC section 6404, which provides for interest relief based on comparable conduct by an IRS employee.