

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of:  
**A. O’CONNOR**

) OTA Case No. 220410179  
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**OPINION**

Representing the Parties:

For Appellant: A. O’Connor

For Respondent: James Filling, Graduate Legal Assistant

For the Office of Tax Appeals: Amber Poon, Graduate Legal Assistant

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, A. O’Connor (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing to assess additional tax of \$5,097, and applicable interest of \$888.74, for the 2017 taxable year.<sup>1</sup>

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 to relieve interest?

**FACTUAL FINDINGS**

1. Appellant filed a timely 2017 California income tax return.
2. On January 8, 2020, FTB received information from the IRS indicating a federal adjustment to appellant’s taxable income after disallowing federal itemized deductions and using the standard federal deduction to compute appellant’s taxable income. The IRS made its final determination on October 10, 2019.

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<sup>1</sup> Appellant concedes the additional tax proposed by FTB’s Notice of Action and only requests abatement of interest. Therefore, the Office of Tax Appeals considers this appeal to be a request for interest relief only.

3. On April 16, 2021, consistent with the federal adjustment, FTB disallowed appellant's itemized deductions and allowed appellant the California standard deduction. FTB issued appellant a Notice of Proposed Assessment (NPA), proposing additional tax of \$6,737, plus applicable interest.
4. After appellant protested the NPA on May 23, 2021, FTB issued a Notice of Action (NOA) which decreased the proposed additional tax to \$5,097, plus applicable interest. Appellant paid \$5,067 on March 15, 2021, and \$30 on January 10, 2022, to satisfy the proposed additional tax. The NOA acknowledges that FTB received appellant's March 15, 2021 payment, which is not reflected in the calculation of interest on the NOA.<sup>2</sup>
5. On April 7, 2022, appellant paid \$731.45 for interest from April 15, 2018, through January 7, 2021, and \$157.29 for interest from May 1, 2021, through March 21, 2022, which equal the interest stated in the NOA.<sup>3</sup>
6. As part of her protest of the NPA, appellant requested relief from interest. In a letter dated December 3, 2021, FTB informed appellant that her request for abatement of interest was forwarded to the Interest Abatement Coordinator. FTB subsequently denied appellant's request for relief from interest in a Notice of Determination Not to Abate Interest.
7. Appellant appealed FTB's NOA, conceding the additional tax, but requesting relief from interest.<sup>4</sup>

### DISCUSSION

Imposing interest on a tax deficiency is mandatory. (R&TC, § 19101(a).) Interest is not a penalty but is compensation for the taxpayer's use of money after it should have been paid to the state. (*Appeal of Moy*, 2019-OTA-057P.) There is no reasonable cause exception to the imposition of interest, and interest can only be waived in certain limited situations when

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<sup>2</sup> FTB is holding appellant's payments in suspense (treating them as tax deposits), presumably until this appeal is final.

<sup>3</sup> When this appeal is final, FTB will adjust the interest based on the dates it received appellant's payments.

<sup>4</sup> Appellant's appeal was filed on April 7, 2022, which is before FTB issued its Notice of Determination Not to Abate Interest, which also provided appellant with appeal rights. Because appellant filed her appeal before FTB issued this notice, this appeal is being treated as an appeal of the NOA.

authorized by law. (*Ibid.*) To obtain relief of interest, a taxpayer must qualify under R&TC sections 19104 (unreasonable error or delay), 19112 (extreme financial hardship), or 21012 (reasonable reliance on FTB's written advice). (*Appeal of Moy, supra.*)

Appellant contends that she had no idea that she would owe more tax to the IRS and to FTB until the IRS made a final determination on October 10, 2019. Appellant further asserts that she has a long history of making timely tax payments.<sup>5</sup> Appellant contends that she had expensive home repairs in 2017 that resulted in the disallowed itemized deductions. Appellant reports that paying the interest while she is on a fixed income creates a financial hardship. For these reasons, appellant requests relief of interest from April 15, 2018, to January 7, 2021, and May 1, 2021, to March 21, 2022.<sup>6</sup> In the alternative, appellant proposes that interest should be recalculated to commence on either: the date when the IRS issued its final determination (October 10, 2019), or the date when FTB issued its NPA (April 16, 2021).

Interest relief under R&TC section 21012 is not relevant here because FTB did not provide appellant with any written advice. Under R&TC section 19104(a)(1), FTB has the discretion to abate all or a part of any interest on a deficiency to the extent that interest is attributable in whole or in part to any unreasonable error or delay committed by FTB in the performance of a ministerial or managerial act. (R&TC, § 19104(a)(1).) An error or delay can only be considered when no significant aspect of the error or delay is attributable to the taxpayer and after FTB has contacted appellant in writing with respect to the deficiency or payment. (R&TC, § 19104(b)(1).) OTA has jurisdiction to determine whether FTB's denial of interest abatement under R&TC section 19104 was an abuse of discretion. (R&TC, § 19104(b)(2)(B); *Appeal of Moy, supra.*)

For the interest that accrued from April 15, 2018, to January 7, 2021, interest cannot be abated because that was a period prior to when FTB contacted appellant in writing about the deficiency. (R&TC, § 19104(b)(1).) In this case, the interest that accrued prior to the

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<sup>5</sup> R&TC section 19132.5, effective for tax years beginning on or after January 1, 2022, allows an individual taxpayer to request a one-time abatement of a timeliness penalty. This provision does not apply to the 2017 taxable year and would relieve interest only as it applies to any abated penalties. No statutory provision allows FTB to relieve interest based on a good filing and payment history.

<sup>6</sup> FTB must suspend interest for the time that begins with the expiration of the notification period, as defined in R&TC section 19116(e), through the date that is 15 days after FTB notifies appellant of the adjustments. FTB received notice of adjustments to appellant's federal tax on January 8, 2020, and issued its NPA April 16, 2021. FTB therefore suspended interest from January 8, 2021, through May 1, 2021. That time period is not at issue in this appeal.

April 16, 2021 NPA may not be abated. Thus, FTB did not abuse its discretion with respect to interest that accrued from April 15, 2018, to January 7, 2021. Furthermore, a significant aspect of any alleged delay is due to appellant failing to notify FTB of the final federal determination. Thus, significant delays may be attributed to appellant. Accordingly, FTB did not abuse its discretion with respect to interest that accrued from April 15, 2018, through January 7, 2021.

As for the second period, May 1, 2021, to March 21, 2022, the evidence does not show there was an unreasonable error or delay by an officer or employee of FTB while performing a ministerial or managerial act. The mere passage of time does not prove unreasonable error or delay, and FTB's workload constraints are not a basis for interest abatement. (*Appeal of Gorin*, 2020-OTA-018P.) Appellant filed her protest with FTB on May 23, 2021. FTB responded on December 3, 2021, indicating that based upon information appellant submitted, FTB reduced the additional tax proposed in the NPA. OTA does not find that seven months is an unreasonable amount of time to review and respond to appellant's protest. As such, FTB did not abuse its discretion with respect to interest that accrued from May 1, 2021, through March 21, 2022.<sup>7</sup>

As for appellant's contention that the interest should be recalculated from either the date when the IRS issued its final determination (October 10, 2019), or the date when FTB issued its NPA (April 16, 2021), OTA notes that in most cases interest must be assessed from the date a tax payment is due through the date that it is paid. (R&TC, § 19101.) Therefore, the interest is required to be calculated as of the date when appellant's taxes were due, here April 15, 2018, whether she knew the taxes were owed or not.

Appellant further requests abatement based on financial hardship due to her limited income and current financial capability. In this case, FTB may waive interest for any period for which FTB "determines that an individual or fiduciary demonstrates inability to pay that interest solely because of extreme financial hardship caused by significant disability or other catastrophic circumstance." (R&TC, § 19112.) FTB denied the request. OTA does not have jurisdiction to determine whether appellant is entitled to interest abatement under R&TC section 19112. (*Appeal of Moy, supra.*) Based on the evidence in the record and the fact that interest may not be relieved for reasonable cause, appellant has not demonstrated grounds for interest abatement.

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<sup>7</sup> As noted in the NOA, the interest for this time period will be adjusted to reflect the dates of appellant's payments, which were not accounted for in the NOA calculation.

HOLDING

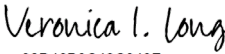
Appellant has not established a basis to relieve interest.

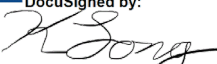
DISPOSITION

FTB’s action denying interest relief is sustained.

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Teresa A. Stanley  
Administrative Law Judge

We concur:

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Veronica I. Long  
Administrative Law Judge

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Keith T. Long  
Administrative Law Judge

Date Issued: 8/25/2023