

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 230212600
R. NAZARENKO AND)
N. NAZARENKO)
_____)

OPINION

Representing the Parties:

For Appellants: R. Nazarenko
For Respondent: Josh Ricafort, Attorney
Eric A. Yadao, Attorney

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, R. Nazarenko and N. Nazarenko (appellants) appeal an action by the Franchise Tax Board (respondent) denying appellants’ claim for refund of \$640.91 for the 2018 taxable year.

Appellants elected to have this appeal determined pursuant to the procedures of the Small Case Program. Those procedures require the assignment of a single administrative law judge. (Cal. Code Regs., tit. 18, § 30209.1.)

Office of Tax Appeals Administrative Law Judge Tommy Leung held an oral hearing for this matter electronically on August 18, 2023. At the conclusion of the hearing, the record was closed, and this matter was submitted for an opinion.

ISSUE

Should interest be abated?

FACTUAL FINDINGS

1. Appellants’ timely filed 2018 California personal income tax return was examined by respondent in 2022, which resulted in a deficiency notice dated May 31, 2022.

2. Appellants paid the deficiency and interest thereon, and then filed a refund claim for the interest, which respondent denied.

DISCUSSION

The imposition of interest is mandatory and accrues on a tax deficiency regardless of the reason for the underpayment. (R&TC, § 19101(a); *Appeal of Balch*, 2018-OTA-159P.) There is no reasonable cause exception to the imposition of interest. (*Appeal of Moy*, 2019-OTA-057P.) Interest is not a penalty, but is compensation for a taxpayer's use of money which should have been paid to the state. (*Ibid.*) Therefore, to obtain interest relief appellant must qualify under R&TC section 19104 (pertaining to unreasonable error or delay by respondent in the performance of a ministerial or managerial act), 19112 (pertaining to extreme financial hardship caused by significant disability or other catastrophic circumstance), or 21012 (pertaining to reasonable reliance on the written advice of respondent). (*Ibid.*) Appellant either did not allege or the record does not show that any of these waiver provisions are applicable here. Therefore, there is no basis for abating interest.

Instead, appellants contend the interest which accrued between April 15, 2019, and April 15, 2022, should be abated because they were not aware that they owed money to respondent and were only notified in early June of 2022 after they received the bill; had appellants known earlier, they would have paid the amount owed in full immediately. However, as noted above, the law requires the imposition of interest.


Nevertheless, appellants appear to argue that respondent committed an unreasonable delay by waiting to notify appellants of the deficiency almost three years after appellants filed their return. Interest attributable in whole or in part to an unreasonable error or delay by respondent in performance of a ministerial or managerial act may be abated. (R&TC, § 19104(a)(1).) However, interest abatement is limited to the period after respondent contacts the taxpayers in writing with respect to a deficiency. (R&TC, § 19104(b)(1).) Since respondent first contacted appellants about the deficiency on May 31, 2022, the interest for the periods prior to that date cannot be abated. Thus, because appellants do not qualify for any of the limited exceptions described herein, interest cannot be abated.

HOLDING

Interest cannot be abated.

DISPOSITION

Respondent's action is sustained.

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Tommy Leung
Administrative Law Judge

Date Issued: 10/2/2023