

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
) OTA Case No. 221212031
S. KANHAIYA AND)
S. KUMAR)
)
)

OPINION

Representing the Parties:

For Appellants: S. Kanhaiya
 S. Kumar

For Respondent: Paige Chang, Attorney

J. ALDRICH, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, S. Kanhaiya and S. Kumar (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants' claim for refund of \$957.18 for the 2017 tax year.

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

ISSUE

Whether appellants are entitled to interest abatement.

FACTUAL FINDINGS

1. Appellants timely filed their 2017 California Resident Income Tax Return (return).
2. On March 12, 2018, FTB issued a refund of \$7,489.
3. On October 29, 2021, FTB issued a Notice of Proposed Assessment (NPA) to appellants that proposed an additional tax of \$5,228 and applicable interest, which was based on information provided to FTB by the IRS after an audit and federal determination.
4. On January 24, 2022, FTB issued a State Income Balance Due Notice.
5. On March 9, 2022, FTB issued an Income Tax Due Notice.

6. On April 9, 2022, FTB received a payment transferred from appellants' 2021 tax year of \$6,185.18.
7. On April 15, 2022, FTB received appellants' Reasonable Cause – Individual and Fiduciary Claim for Refund (Claim for Refund) that requested a refund of interest for the 2017 tax year.
8. On September 15, 2022, FTB issued an Interest Abatement Determination Letter denying appellants' request for interest abatement.
9. This timely appeal followed.

DISCUSSION

Interest generally must be assessed from the date a payment is due through the date that it is paid. (R&TC, § 19101.) The imposition of interest is mandatory, and FTB cannot abate interest except where authorized by law. (R&TC, § 19101; *Appeal of Balch*, 2018-OTA-159P (*Balch*).) Interest is not a penalty; it is compensation for the use of money. (*Balch*.) Interest accrues on a deficiency assessment regardless of the reason for the assessment. (*Ibid.*)

Generally, to obtain relief from interest, taxpayers must qualify under R&TC sections 19104, 19112, or 21012.¹ (*Balch*.) 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) any unreasonable error or delay; (2) by an officer or employee of FTB; (3) in performing a ministerial or managerial act; and (4) which occurred after FTB contacted the taxpayer in writing regarding the proposed assessment, provided no significant aspect of that error or delay is attributable to the taxpayer. (R&TC, § 19104(a)(1), (b)(1).)

OTA has limited jurisdiction in an interest abatement appeal. (R&TC, § 19104(b)(2)(B).) OTA reviews FTB's determination for abuse of discretion. (*Ibid.*; *Appeal of Gorin*, 2020-OTA-018P.) 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

¹ Under R&TC section 19112, FTB may waive interest for any period for which FTB determines that an individual has extreme financial hardship. OTA does not have authority to review extreme financial hardship determinations. (See *Appeal of Moy*, 2019-OTA-057P.) Under R&TC section 21012, a person may be relieved from interest if that person reasonably relies on written advice from FTB in response to a written request. Appellants have not alleged reliance upon written advice from FTB; thus, OTA does not discuss it further.

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.*)

In this matter, appellants assert that interest relief is warranted because the 2017 tax year was their first-year filing taxes with income from their rental property, and they reported their rental income on Schedule C (Profit or Loss from Business). The IRS determined that the rental income should have been reported on Schedule E (Supplemental Income and Loss), resulting in the application of passive activity loss limitation rules for the 2017 tax year. Appellants assert that for this reason their rental losses were deferred, and their taxable income increased.

Here, there are two periods to review for abuse of discretion of FTB's determination regarding interest abatement. That is, the period prior to the NPA and the period between the NPA and the date FTB received payment. No interest may be abated for any period accruing before the date FTB first contacted appellants in writing concerning the deficiency. (R&TC, § 19104(b)(1).) Accordingly, interest relief prior to the October 29, 2021 NPA is not warranted. For the second period, R&TC section 19104 does not apply here because appellants do not allege, and the evidence does not show, that interest is attributable, in whole or in part, to any unreasonable error or delay by an FTB employee. Therefore, FTB properly imposed interest; and OTA has no basis to abate it.

HOLDING

Appellants are not entitled to interest abatement.

DISPOSITION

OTA sustains FTB’s action.

DocuSigned by:
Josh Aldrich
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Josh Aldrich
Administrative Law Judge

We concur:

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

DocuSigned by:
Veronica I. Long
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Veronica I. Long
Administrative Law Judge

Date Issued: 11/27/2023