

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
J. MARKS) OTA Case No. 230513364
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OPINION

Representing the Parties:

For Appellant: J. Marks

For Respondent: Josh Ricafort, Attorney

E. LAM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19104(b)(2), J. Marks (appellant) appeals an action by respondent Franchise Tax Board (FTB) in denying interest abatement for the 2018 tax year.

Appellant 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, § 30209.05.) Appellant waived the right to an oral hearing; therefore, the Office of Tax Appeals (OTA) decides the matter based on the written record.

ISSUE

Whether appellant is entitled to interest abatement.

FACTUAL FINDINGS

1. On April 5, 2019, appellant timely filed her 2018 California Resident Income Tax Return.
2. On October 26, 2022, FTB issued appellant a Notice of Proposed Assessment (NPA) based on information received from the IRS that appellant underreported income. Appellant had failed to notify FTB of the federal changes.
3. According to the NPA, FTB adjusted appellant’s reported taxable income by \$81,398, resulting in a proposed additional tax of \$7,574, plus applicable interest.

4. By letter dated December 12, 2022, FTB received appellant's letter wherein appellant conceded that she owed additional tax assessed by FTB, but requested abatement of interest. Appellant also remitted payment in the amount of \$7,574 for the additional tax, but no payments were made for the applicable interest.
5. On May 2, 2023, FTB issued a Notice of Action (NOA) to appellant, which affirmed the NPA and acknowledged appellant's payment of \$7,574. In a May 2, 2023 Interest Abatement Determination Letter, FTB denied appellant's request for interest abatement.
6. This timely appeal followed.
7. On appeal, appellant requests interest abatement on the basis that she relied on the erroneous information from her investment company, Vanguard Corporation, when filing her return.

DISCUSSION

R&TC section 19060(a) provides that if the taxpayer fails to notify FTB of the federal changes, then FTB may issue a proposed assessment at any time. 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,¹ under R&TC section 19104, 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.)

¹ In order to qualify for interest abatement, a taxpayer must qualify under the waiver provisions of R&TC sections 19104, 19112, or 21012. (*Appeal of Balch*, 2018-OTA-159P.) OTA does not have jurisdiction to overturn FTB's decision with respect to whether appellants qualify for relief under R&TC section 19112; therefore, it is not relevant in this appeal. (*Appeal of Moy*, 2019-OTA-057P.) The relief of interest under R&TC section 21012 is also not relevant here because FTB did not provide appellant with any written advice.

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.*)

On appeal, appellant argues that interest should be waived due to erroneous information provided by Vanguard Corporation to TurboTax, which appellant contends she relied upon for filing her tax return. Additionally, appellant asserts that the federal government has abated similar interests, emphasizing that it was not a willful evasion of taxes but merely a mistake by the investment company. However, as stated above, R&TC section 19104(a)(1) provides that FTB may abate interest accrued due to unreasonable error or delay in FTB's performance of a managerial or ministerial act, which occurred after FTB contacted taxpayer in writing regarding the proposed deficiency. Here, a review of the record does not show any facts and circumstances that would warrant a finding that there was any unreasonable error or delay attributable to FTB following its issuance of the NPA. Furthermore, there is no statutory authority to abate interest because the federal government or IRS has abated similar interest for appellant. As such, there are no grounds for OTA to conclude that FTB abused its discretion in denying appellant's request for abatement of interest 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

Date Issued: 2/28/2024