

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 221111829
C. LEAL AND)
S. LEAL)
_____)

OPINION

Representing the Parties:

For Appellants: C. Leal
S. Leal

For Respondent: Annika McClure, Attorney

For Office of Tax Appeals: Nguyen Dang, Attorney

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19104(b)(2), C. Leal and S. Leal (appellants) appeal an action by the Franchise Tax Board (respondent) denying appellants’ request for interest abatement for the 2017 taxable year.

Appellants waived their right to an oral hearing; therefore, this matter is being decided based on the written record.

ISSUE

Whether interest should be abated.

FACTUAL FINDINGS

1. Appellants timely filed their joint 2017 California income tax return (Return) on April 15, 2018.
2. On July 26, 2021, respondent issued a Notice of Proposed Assessment (NPA) to appellants for the 2017 taxable year, imposing additional tax and applicable interest.
3. Appellants conceded the proposed additional tax, but requested interest relief.
4. Respondent denied appellants’ request for interest relief.

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, appellants 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.*) Appellants 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.

Appellants assert that relief of both accrued and future interest is warranted because there was an unreasonable delay in the issuance of respondent's NPA, such that appellants did not receive notice of the deficiency for "almost five years" after filing their Return. Appellants further contend that the payment of interest would result in "a great hardship especially during [the COVID-19 pandemic]."

Because the imposition of interest is mandatory (R&TC, § 19101(a)), there is no basis for abating interest which has yet to accrue. Moreover, OTA lacks the authority to review respondent's denial of interest relief under R&TC section 19112; thus, this panel is unable to consider appellants' relief request based on financial hardship. (*Appeal of Moy, supra.*)

Furthermore, respondent's denial of appellants' relief request based on unreasonable delay may only be reviewed for an 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, respondent exercised its discretion arbitrarily, capriciously, or without sound basis in fact or law. (*Appeal of Gorin*, 2020-OTA-018P.)

In determining whether respondent abused its discretion, there is no need to decide if there was any unreasonable delay in issuing the NPA because the law provides that interest may not be abated under R&TC section 19104 for any period prior to the first written contact by respondent with respect to a deficiency which, in this case, was the NPA. (R&TC, § 19104(b)(1).) As appellants do not allege that there was any unreasonable delay by respondent

after the issuance of the NPA, respondent did not abuse its discretion in denying appellants' interest relief request.¹

HOLDING

Interest should not be abated.

DISPOSITION

Respondent's action is sustained.

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Tommy Leung
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Tommy Leung
Administrative Law Judge

We concur:

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Veronica I. Long
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Veronica I. Long
Administrative Law Judge

DocuSigned by:
Kenneth Gast
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Kenneth Gast
Administrative Law Judge

Date Issued: 4/4/2024

¹ While the foregoing is dispositive, it is noted that respondent issued the NPA within approximately 39 months (i.e., about three years) of appellants' filing their Return (and not five years, as appellants allege), and that the imposition of interest was therefore suspended during this time for a period of roughly three months plus 15 days pursuant to R&TC section 19116. Thus, in effect, appellants have already received some interest relief for the period prior to the issuance of the NPA.