



3. In a letter dated September 28, 2020, appellants timely protested the NPA and submitted partial payment of \$1,000 and promised to settle whatever balance due if respondent agreed to waive interest and penalties.<sup>1</sup>
4. Respondent acknowledged appellants' protest on February 15, 2022.
5. On February 1, 2023, respondent issued to appellants: (1) an Interest Abatement Determination Letter denying appellants' request for interest abatement; and (2) a Notice of Action (NOA) affirming the NPA.<sup>2</sup>
6. This timely appeal followed.

### DISCUSSION

If taxes are not paid by the due date, respondent is required to impose interest, which accrues from the due date until the date the taxes are paid. (R&TC, § 19101(a).) Interest is not a penalty; rather, it is compensation for the taxpayer's use of money which should have been paid to the state. (*Appeal of Balch*, 2018-OTA-159P.)

The Office of Tax Appeals (OTA) has jurisdiction to determine whether appellant is entitled to the abatement of interest under R&TC sections 19104 and 21012. (*Appeal of Moy*, 2019-OTA-057P.) It does not have the authority to grant interest relief on the basis of financial hardship under R&TC section 19112, and there is no legal authority for interest abatement based on reasonable cause. (*Ibid.*) Abatement of interest under R&TC section 21012 requires that the interest be due to the taxpayer's reasonable reliance on written advice from respondent. Appellants have not argued, and there is no evidence showing, that there was any written advice from respondent.

Under R&TC section 19104(a)(1), respondent 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 respondent; (3) in performing a ministerial or managerial act; and (4) which occurred after respondent 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); *Appeal of Gorin*, 2020-OTA-018P.)

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<sup>1</sup> Although appellants requested waiver of the accuracy-related penalty and interest, they later agreed that they do not contest the tax or the accuracy-related penalty.

<sup>2</sup> The NOA does not reflect appellants' \$1,000 payment on October 2, 2020, and it does not state the correct amount of interest then due.

OTA's jurisdiction to review respondent's action on a request for interest abatement extends only to a decision regarding whether respondent abused its discretion. (R&TC, § 19104(b)(2)(B).) To establish an abuse of discretion, the evidence must show that in denying abatement, respondent exercised its discretion arbitrarily, capriciously, or without sound basis in fact or law. (*Appeal of Gorin, supra.*) Generally, abatement of interest is ordered only when the contrary result (i.e., denial of abatement) would be viewed as grossly unfair. (*Ibid.*) Citing *Jacobs v. Commissioner*, T.C. Memo. 2000-123, OTA has stated that, "Where the administrative record is silent regarding the actions taken on a taxpayer's matter, and the tax agency does not come forth with evidence to show that the employees assigned to the matter or involved in its review were actively working on it, there may be no apparent basis to support the agency's determination not to abate interest, and the unsupported determination may constitute an abuse of discretion." (*Appeal of Gorin, supra.*)

Respondent issued the NPA on August 17, 2020. Appellants filed a timely protest on September 28, 2020 requesting, among other things, interest abatement. Respondent did not acknowledge the protest for over 17 months, and respondent did not inform appellants regarding its decision to deny interest relief for almost another year. It took respondent about 28 months – or, more accurately, 856 days – for respondent to act on appellant's request for abatement of interest. Yet, respondent takes no responsibility and offers no explanation for the delay. Instead, it argues that appellants' accrual of interest is entirely attributable to their inaccurate return, their failure to timely notify respondent of the federal changes, and their failure to pay the tax.

When respondent can avoid interest abatement by pointing to a taxpayer's failure to notify respondent regarding an adjustment to the taxpayer's federal return, or to a taxpayer's failure to pay taxes when due, R&TC section 19104 becomes superfluous. A correct analysis of interest abatement begins with the written notice of the proposed assessment to the taxpayer. (R&TC, § 19104(b)(1).) It seems obvious that respondent's deliberations did not take long, which begs the question: why did respondent take 856 days to deny abatement? Under the circumstances examined in *Appeal of Gorin, supra*, six months was considered a reasonable period of time to act on a protest. It is possible that a bit more time might have been required here given the COVID-19 pandemic was starting to take hold in early 2020, but respondent has made no such argument – or any colorable argument.

On the basis of the arguments and evidence presented, OTA finds that six months was a reasonable period of time to allow respondent to act on the interest abatement request and that respondent’s failure to grant interest abatement from April 1, 2021, to January 31, 2023, was an abuse of discretion.<sup>3</sup>

HOLDING

Appellants are entitled to abatement of interest for the period April 1, 2021, through January 31, 2023.

DISPOSITION

Respondent’s action denying appellant’s request for interest abatement is modified by allowing abatement from April 1, 2021, through January 31, 2023. In all other respects, respondent’s action is sustained.

DocuSigned by:  
*Michael Geary*  
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Michael F. Geary  
Administrative Law Judge

We concur:

DocuSigned by:  
*Tommy Leung*  
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Tommy Leung  
Administrative Law Judge

DocuSigned by:  
*Kenneth Gast*  
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Kenneth Gast  
Administrative Law Judge

Date Issued: 3/22/2024

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<sup>3</sup> As a reminder, six months after the protest filing date was March 28, 2021, and Respondent issued its Interest Abatement Determination Letter on February 1, 2023.