

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 230713930  
P. MRKAICH AND )  
S. MRKAICH )  
\_\_\_\_\_ )

**OPINION**

Representing the Parties:

For Appellants: S. Mrkaich  
For Respondent: Brad J. Coutinho, Attorney Supervisor  
Jaclyn Zumaeta, Assistant Chief Counsel

J. JOHNSON, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19104(b)(2)(A), appellants P. Mrkaich and S. Mrkaich appeal an action by respondent Franchise Tax Board denying interest abatement in the amount of \$1,784.42 for the 2018 tax 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, § 30209.05.) Office of Tax Appeals (OTA) Administrative Law Judge John O. Johnson held an oral hearing for this matter in Fresno, California, on April 17, 2024. At the conclusion of the hearing, the record was closed and this matter was submitted for an opinion.

**ISSUE**

Whether appellants have shown respondent abused its discretion in determining not to abate interest for the 2018 tax year.

**FACTUAL FINDINGS**

1. On April 15, 2019, appellants filed a timely joint return for the 2018 tax year reporting an overpayment of \$1,870, which respondent refunded to appellants.

2. Subsequently, respondent determined that appellants erroneously subtracted pension and annuity income on their Schedule CA and issued a Notice of Proposed Assessment (NPA) on December 1, 2022, which increased appellants taxable income by the amount of excluded pension and annuity income and proposed additional tax and interest.<sup>1</sup>
3. Appellants paid the amount reported in the NPA on January 9, 2023.<sup>2</sup>
4. Appellants subsequently submitted a request for interest abatement, which respondent denied. Appellants then timely filed this appeal.

### DISCUSSION

The imposition of interest is mandatory. (R&TC, § 19101(a).) Interest is not a penalty but is merely compensation for a taxpayer's use of money after it should have been paid to the state. (*Appeal of Gorin*, 2020-OTA-018P.) There is no reasonable cause exception to the imposition of interest. (*Appeal of Moy*, 2019-OTA-057P.)

Appellants attribute the accrual of interest on appeal to the fact that respondent did not issue its NPA for the 2018 tax year until December 2022, more than three and a half years after they filed their return. However, respondent generally has four years from the date of a timely-filed return to issue an NPA. (R&TC, § 19057.) To offset some of the interest that can accrue during this four-year period, R&TC section 19116 provides that respondent will stop charging interest 36 months (i.e., three years) after the date the timely-filed return was filed, and interest accrual does not resume until 15 days after the date the NPA is issued. Here, respondent issued its NPA timely, and appellants were not charged interest for a period following April 15, 2022 (i.e., three years after the return was filed), up to 15 days after the NPA was issued.

Under R&TC section 19104(a)(1), respondent may abate interest related to a proposed assessment 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

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<sup>1</sup> References were made at the hearing and in submissions to a "penalty" on appeal, however the NPA did not include any penalties. Those references will be treated as referring to the interest at issue.

<sup>2</sup> In addition to the amount of interest listed on the NPA, a small amount of interest accrued starting 15 days after the issuance of the NPA. (See R&TC, § 19116, discussed *infra*.) Appellants' payment in January 2023 did not cover this additional interest, and they subsequently paid it in March 2023. The period from January 2023 to March 2023 has not been contested by the parties, and therefore will not be separately addressed.

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, supra.*) OTA's jurisdiction in an appeal over interest abatement under R&TC section 19104 is limited to a review of whether respondent's determination not to abate interest constitutes an abuse of discretion. (R&TC, § 19104(b)(2)(B).)<sup>3</sup> 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. (*Woodral v. Commissioner* (1999) 112 T.C. 19, 23.)

Here, respondent first contacted appellants in writing regarding the proposed assessment for the 2018 tax year on December 1, 2022, when it issued the NPA. Appellants then paid the outstanding liability, ending the accrual of interest, on January 9, 2023. As noted above, R&TC section 19104 only allows for interest abatement for periods following respondent's first written contact to appellants regarding the proposed assessment. Accordingly, the question of interest abatement under R&TC section 19104 is focused on the period between December 1, 2022, and January 9, 2023. There is no evidence in the record showing an unreasonable error or delay during this roughly five-week period, and therefore respondent did not abuse its discretion in denying appellants' interest abatement request. Accordingly, appellants have not shown that any abatement of interest is warranted under R&TC section 19104.

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<sup>3</sup> In addition to R&TC section 19104, interest abatement is also available under certain specified circumstances; however, the record does not contain arguments or facts that suggest that any of these specific circumstances are present in this appeal. (See, e.g., R&TC, §§ 19112, 21012; see also *Appeal of Moy, supra.*)

HOLDING

Appellants have not shown respondent abused its discretion in determining not to abate interest for the 2018 tax year.

DISPOSITION

Respondent's action denying interest abatement is sustained.

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John O. Johnson  
Administrative Law Judge

Date Issued: 7/12/2024