

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

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| In the Matter of the Appeal of: |) | OTA Case No. 230914245 |
| W. DAVIS |) | |
| |) | |
| |) | |
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OPINION

Representing the Parties:

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| For Appellant: | W. Davis |
| For Respondent: | Andrea Watkins, Attorney |

S. RIDENOUR, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, W. Davis (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant's claim for refund of \$1,566.58 for the 2016 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 panel member. (Cal. Code Regs., tit. 18, § 30209.05(b).) Appellant waived the right to an oral hearing; therefore, the matter was submitted to the Office of Tax Appeals (OTA) on the written record pursuant to California Code of Regulations, title 18, section 30209(a).

ISSUES

1. Whether the collection cost recovery fee should be abated.
2. Whether appellant has established a basis to abate interest.

FACTUAL FINDINGS

1. On September 8, 2017, appellant timely filed her 2016 California Resident Income Tax Return (Form 540), including a Schedule CA (540), within the automatic extension period. Appellant claimed a personal exemption of \$111 and one dependent exemption of \$344. Appellant reported an overpayment of \$4,358, which appellant requested be directly deposited into her checking account.
2. Appellant's Form 540 was missing pages; nevertheless, FTB was able to calculate on appellant's behalf, a revised overpayment of \$4,525 (compared to the reported

- overpayment of \$4,358). FTB sent appellant a Notice of Tax Return Change – No Balance notifying her of the changes made to her tax return.
3. On September 27, 2017, FTB sent appellant a Notice of Intercepted Funds, notifying appellant that she had an outstanding federal balance due with the IRS. FTB explained that pursuant to California Government Code sections 926.8 and 12419, FTB intercepted appellant's 2016 California tax refund of \$4,525 and sent it to the IRS to be applied towards her outstanding federal balance, as opposed to depositing it directly into her checking account.
 4. On February 11, 2021, appellant filed an amended 2016 California tax return (Form 540X), reporting an increased amount of total tax, and claiming a personal exemption of \$111 and two dependent exemptions totaling \$688 (for a total of \$799 in claimed exemptions). Appellant reported tax due and remitted payment of \$1,300.53 with her return.
 5. FTB reviewed appellant's 2016 Form 540X and noted that while appellant received an agency offset credit of \$4,525 (the amount FTB previously intercepted and sent to the IRS on appellant's behalf), appellant did not report on her Form 540X the \$4,525 as a credit.
 6. On April 22, 2021, FTB sent appellant a Notice of Tax Return Change – Revised Balance, notifying her that she had a revised balance due of \$5,776.46, calculated as follows: \$9,379 in tax due - \$799 in total claimed exemptions - \$1,300.53 for the payment appellant remitted with Form 540X - \$7,125 in withholding credits + \$1,096.99 in interest and fees + \$4,525 for the agency offset credit sent to the IRS.
 7. In response, appellant requested that she be allowed to claim both her children as dependents.
 8. On July 19, 2021, FTB sent appellant a Final Notice Before Levy and Lien notifying appellant that if she did not pay the outstanding balance by the due date provided, collection action would be taken against her and a collection fee may be imposed.
 9. In response, appellant indicated that she paid the balance due that she reported on her Form 540X, and that the check remitting the payment was cashed. Appellant requested FTB to update her account to reflect the payment and her two claimed dependents.
 10. When appellant did not remit payment of the balance due, FTB pursued collection activity and imposed a collection cost recovery fee of \$316.

11. Subsequently, appellant's outstanding balance was satisfied. Thereafter, appellant filed a claim for refund for the \$316 collection cost recovery fee and \$1,250.58 in interest, which FTB denied.
12. Appellant timely filed this appeal.

DISCUSSION¹

Issue 1: Whether the collection cost recovery fee should be abated.

R&TC section 19254(a)(1) requires FTB to impose a collection cost recovery fee when FTB notifies a taxpayer that the continued failure to pay an amount due may result in the imposition of the fee, and the taxpayer fails to timely pay the amount due in response to the notice. The amount of the fee is adjusted annually to reflect actual enforcement costs. (R&TC, § 19254(b).) There is no reasonable cause defense to the imposition of the fee; thus, OTA's inquiry is limited to determining whether FTB complied with the statutory notice requirements for imposing the collection cost recovery fee. (*Appeal of Auburn Old Town Gallery, LLC*, 2019-OTA-319P.)

Here, the collection cost recovery fee was properly imposed after appellant failed to remit payment for the balance due after FTB sent her a Final Notice Before Levy and Lien. Once FTB properly imposes the fee, there is no language in the statute that would excuse the fee for any reason, including reasonable cause. (See *Appeal of Auburn Old Town Gallery, LLC*, *supra*.) Accordingly, the collection cost recovery fee cannot be abated.

Issue 2: Whether appellant has established a basis to abate interest.

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.) Interest is not a penalty but is compensation for the taxpayer's use of money which should have been paid to the state, and it can only be abated in certain limited situations when authorized by law. (*Appeal of Moy*, 2019-OTA-057P.) There is no reasonable cause exception to the imposition of interest. (*Ibid.*)

To obtain interest relief, appellant must qualify under one of the provisions of R&TC sections 19104 (pertaining to unreasonable error or delay by FTB in the performance of a

¹ Regarding appellant's contention that she is entitled to claim both her children as dependents for the 2016 year, OTA notes that FTB accepted both dependent exemptions that appellant claimed on her Form 540X. According to the Notice of Tax Return Change – Revised Balance, appellant's 2016 tax account included exemptions totaling \$799 (i.e., personal exemption of \$111 + two dependent exemptions totaling \$688).

ministerial or managerial act), 19112 (pertaining to extreme financial hardship caused by significant disability or other catastrophic circumstance),² or 21012 (pertaining to reasonable reliance on the written advice of FTB). (*Appeal of Moy, supra.*) Appellant does not allege, and the record does not indicate, that any of these provisions apply. Therefore, there is no legal basis for interest abatement.

HOLDINGS

1. The collection cost recovery fee should not be abated.
2. Appellant has not established a basis for abatement of interest.

DISPOSITION

FTB's action denying appellant's claim for refund is sustained.

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Sheriene Anne Ridenour
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Sheriene Anne Ridenour
Administrative Law Judge

Date Issued: 2/3/2025

² OTA does not have the legal authority to review or overturn FTB's denial of a waiver of interest based on extreme financial hardship. (*Appeal of Moy, supra.*)