

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: )  
M. COLLINS AND ) OTA Case No. 230413084  
C. COLLINS )  
\_\_\_\_\_ )

**OPINION**

Representing the Parties:

For Appellants: M. Collins  
C. Collins

For Respondent: Josh Ricafort, Attorney

For Office of Tax Appeals: Neha Garner, Attorney

S. BROWN, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) sections 19045 and 19104(b)(2), M. Collins and C. Collins (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying interest abatement for the 2018 tax year.

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

**ISSUE**

Whether appellants are entitled to interest abatement.

**FACTUAL FINDINGS**

1. Appellants timely filed their 2018 California Resident Income Tax Return using the CalFile tax filing software and reported zero California taxable income. After applying withholding credit of \$2,676, appellants claimed a refund of \$2,676.
2. FTB issued a refund of \$2,676 to appellants.
3. On April 28, 2022, FTB issued a Notice of Proposed Assessment (NPA) to appellants reflecting a revised California taxable income, resulting in additional tax of \$6,163, plus applicable interest. The NPA stated that appellants cannot deduct income on their

- Schedule CA that they did not include in the adjusted gross income shown on their federal income tax return.
4. Appellants protested the NPA, arguing that the error in their tax return was caused by glitches in the CalFile tax filing software and that they were only made aware of the issue when they received the NPA. Appellants argued that the tax filing software “automatically filled in some of the field amounts automatically/prompted the user; specifically on the ‘California adjustments – residents’ form, line item #10, column B.”
  5. FTB sent appellants a letter confirming FTB’s position that the NPA is correct as issued. The letter stated in part that taxpayers are ultimately responsible for the correctness of their return despite what software program was used and that the lack of knowledge does not relieve the taxpayers of responsibility.
  6. In a letter to FTB, appellants restated their position and requested interest abatement.
  7. On March 20, 2023, FTB issued a Notice of Action affirming the proposed tax of \$6,163, plus applicable interest. FTB also issued an Interest Abatement Determination Letter denying appellants’ request for interest abatement.
  8. This timely appeal to the Office of Tax Appeals (OTA) followed.
  9. On appeal, FTB submits a declaration from C. Reali, an FTB Information Technology supervisor, dated August 22, 2023, and signed under penalty of perjury, stating that they reviewed FTB’s CalFile system records during the time period in question and did not find any record suggesting that CalFile had any glitches or issues. The declaration further states that while the CalFile program may calculate certain fields, the entry that appellants made in the “Your California income tax refund” field, which resulted in the understatement of tax, was not a field auto-filled by the CalFile system. The declaration notes that a taxpayer’s entry in that field appears on the Schedule CA as an adjustment (subtraction) to California income on line 10B of the Schedule CA.

## DISCUSSION

Interest generally must be assessed from the date a payment is due through the date that it is paid. (R&TC, § 19101.) The imposition of interest is mandatory. (*Ibid.*) Interest is not a penalty; it is compensation for the use of money. (*Appeal of Balch*, 2018-OTA-159P.) Interest accrues on a deficiency assessment regardless of the reason for the assessment. (*Ibid.*) FTB cannot abate interest except where authorized by law. (*Ibid.*)

Under R&TC section 19104(a)(1), FTB may abate interest related to a proposed deficiency to the extent the interest is attributable in whole or in part to: (1) any unreasonable error or delay; (2) by an officer or employee of FTB; (3) in performing a ministerial or managerial act; and (4) which occurred after FTB 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).)<sup>1</sup>

OTA's jurisdiction in an interest abatement appeal is limited to reviewing FTB's determination for abuse of discretion. (R&TC, § 19104(b)(2)(B); *Appeal of Gorin*, 2020-OTA-018P.) To show an abuse of discretion, taxpayers 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.*)

Appellants contend that they are entitled to interest abatement because they were not notified of the error on their return until April 2022. Appellants further contend that they relied on FTB's CalFile tax preparation software which, appellants allege, automatically filled in the field amount for Schedule CA adjustments and resulted in an erroneously reported California taxable income.

For the period prior to April 28, 2022, no interest may be abated. R&TC section 19104(b)(1) precludes interest abatement for the period prior to the date FTB first

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<sup>1</sup> Interest may also be abated under R&TC sections 19112 and 21012. R&TC section 19112 allows FTB to abate interest when a taxpayer is unable to pay the interest solely because of extreme financial hardship caused by significant disability or other catastrophic circumstance. OTA does not have jurisdiction to review FTB's denial of interest abatement under R&TC section 19112. (*Appeal of Moy*, 2019-OTA-057P.) R&TC section 21012 allows FTB to abate interest when a taxpayer's failure to make a timely return or payment is due to the taxpayer's reasonable reliance on written advice from FTB. R&TC section 21012 is not applicable, because there has been no reliance on any written advice requested of FTB.

contacts taxpayers in writing concerning the deficiency. Therefore, FTB did not abuse its discretion in denying interest abatement for this period.

For interest abatement for the period beginning on April 28, 2022, appellants must show that FTB committed an unreasonable delay or error in the performance of a ministerial or managerial act and no significant aspect of that error or delay is attributable to appellants.

First, FTB issued the NPA in a timely manner. FTB had until April 15, 2023, to issue a notice of proposed assessment for the 2018 tax year. (R&TC, § 19057(a).) FTB timely issued the NPA on April 28, 2022, prior to the expiration of the statute of limitations. Therefore, this does not constitute an unreasonable error or delay for purposes of interest abatement. Second, appellants have not shown that interest is attributable, in whole or in part, to any unreasonable error or delay by an FTB employee in the performance of a ministerial or managerial act. The mere passage of time does not establish error or delay in performing a managerial act. (*Appeal of Gorin, supra.*) Although appellants assert that the error was caused by an error in FTB's CalFile tax preparation software, the declaration provided by C. Reali confirms that there were no known errors or glitches to FTB's software during the period appellants filed their return. In the context of reasonable cause based on tax preparation software, the U.S. Tax Court has held that a taxpayer must provide evidence that demonstrates the tax preparation software had a programming flaw or instructional error to establish reasonable cause. (*Morales v. Commissioner*, T.C. Memo. 2012-341; *Appeal of Mauritzson*, 2021-OTA-198P.) That is because tax preparation software is only as good as the information one inputs into it. (*Appeal of Mauritzson, supra.*) In other words, appellants must show that the error was due to the tax preparation software and not appellants' own error. (*Ibid.*)

Appellants have not provided evidence of what information they input into the tax preparation software nor evidence regarding the technical malfunction that they allege occurred. Appellants have the burden to provide credible and competent evidence; their unsupported assertion that there was a glitch that caused the substantial understatement of tax does not satisfy their burden of proof. (*Appeal of Xie*, 2018-OTA-076P; *Appeal of Moren*, 2019-OTA-176P.) Based on the foregoing, appellants have not demonstrated that the accrual of interest is attributable to an unreasonable error or delay by FTB in the performance of a managerial or ministerial act. Accordingly, there is no basis to conclude that FTB abused its discretion in denying appellants' request for abatement of interest.

HOLDING

Appellants are not entitled to interest abatement.

DISPOSITION

FTB's action is sustained.

DocuSigned by:

*Suzanne B. Brown*

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Suzanne B. Brown  
Administrative Law Judge

We concur:

Signed by:

*Josh Lambert*

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Josh Lambert  
Administrative Law Judge

Signed by:

*Seth Elsom*

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Seth Elsom  
Hearing Officer

Date Issued: 3/18/2025