OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **P. WHITE AND** **C. WHITE**	)	OTA Case No. 230914381

OPINION

Representing the Parties:

For Appellants: P. White
C. White

For Respondent: Eric A. Yadao, Attorney

V. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, P. White (appellant-husband) and C. White (appellant-wife) (collectively, appellants) appeal an action by respondent Franchise Tax Board (FTB) proposing additional tax of $9,643 and applicable interest for the 2018 tax year.[1]

Appellants 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 appellants have established error in FTB's proposed assessment of additional tax.
2. Whether appellants have established a basis to abate interest.

FACTUAL FINDINGS

1. In 2018, appellant-husband worked for Carollo Engineers, Inc. (Carollo) and Frontier Engineers (Frontier), his sole proprietorship. Appellant-husband exclusively performed work for Frontier in Alaska, but performed work for Carollo in various states, including California.

[1] As discussed below, FTB agrees to reduce its proposed assessment to $3,921, plus interest.

2. Appellants timely filed a 2018 California Nonresident or Part-Year Resident Income Tax Return using a filing status of married filing jointly. On Schedule CA (540NR), appellants reported that appellant-husband was domiciled in Alaska and spent 124 days in California. Appellants reported that appellant-wife was domiciled in California and spent 124 days in California. Appellants subtracted income of $106,128 on their Schedule CA, reported total tax of $3,795, and an overpayment of $14,750. FTB refunded appellants' reported overpayment.
3. FTB received a 2018 Form W-2 Wage and Tax Statement from Carollo reflecting that appellant-husband's wage income from Carollo was California taxable income. FTB subsequently issued a Notice of Proposed Assessment (NPA) increasing appellants' California taxable income by $106,128 and computing appellants' taxable income as if all wage income were earned in California. The NPA proposed additional tax of $9,643, plus interest.
4. Appellants protested the NPA and submitted a letter dated August 23, 2023, from Carollo (Carollo letter) stating that appellant-husband worked outside of California for 103 workdays in 2018. The August 23, 2023 letter included a spreadsheet of appellant-husband's outbound and inbound flights with confirmation numbers. FTB issued a Notice of Action (NOA) affirming the NPA.
5. This timely appeal followed.
6. On appeal, FTB states that its NOA, which was issued eight calendar days after appellants' submission of the Carollo letter, had not yet acknowledged or evaluated the Carollo letter. Based on the letter, FTB agrees to reduce its proposed assessment of additional tax to $3,921, plus interest. This amount includes a reduction for appellant-husband's workdays spent outside of California and a further reduction of $472 due to appellants' non-California source income.

DISCUSSION

Issue 1: Whether appellants have established error in FTB's proposed assessment of additional tax.

FTB's determination of fact is presumed correct, and taxpayers have the burden of proving such determinations are erroneous. (*Appeal of Head and Feliciano*, 2020-OTA-127P.) California residents pay taxes on their entire taxable income (regardless of source) while nonresidents pay taxes on taxable income from California sources only. (R&TC, §§ 17041(a), (b), & (i); 17951.) The tax rate imposed on a nonresident under R&TC section 17041(b) is part

of a multistep process known as the "California Method." Under the California Method, the rate of tax applied to the income of a nonresident of California that is subject to California tax is determined by taking into account the taxpayer's worldwide income for the entire tax year. (See *Appeal of Williams*, 2023-OTA-041P.) The California Method does not tax non-California source income earned while a taxpayer is a nonresident of California but merely considers a taxpayer's "entire taxable income" for the year, including income from non-California sources, in determining the applicable tax rate. (R&TC, § 17041(b)(2).) California law utilizes progressive tax rates to apportion the tax burden based on ability to pay; thus, the higher a taxpayer's taxable income, the higher the tax rate applied to that income. Use of the California method preserves the progressive nature of California's tax system, such that taxpayers with similar incomes from all sources (and not just California) are taxed equally. (*Appeal of Williams*, *supra*.)

Appellants agree with including their income of $106,128 to compute their tax rate but contend that appellant-husband spent additional days outside of California in 2018, including: 149 workdays outside of California, 6 days working in Las Vegas, and 24 vacation days that were spent out of state.[2] FTB's proposed assessment reflects that appellant-husband was absent from California for 137 days and present for the remaining 228 days. As support for their contention, appellants include a spreadsheet listing travel dates and durations. In response, FTB requested evidentiary support, such as evidence of air or car travel, hotel stays, invoices or payments made out of state, or other evidence of business travel out of state. Appellants did not provide any such information. In contrast, FTB's proposed assessment is supported by the Carollo letter, in which appellant-husband's employer stated that appellant spent 103 workdays outside of California. Accordingly, appellants have not established error in FTB's proposed assessment.

Issue 2: Whether appellants have 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.) There is no reasonable cause exception to the imposition of interest. (*Appeal of Moy*, 2019-OTA-057P.) To obtain interest relief, appellants must qualify under one of the waiver provisions of R&TC

[2] Vacation pay is a direct result of the California employment and includable in California income where an employee earns his or her total wages by working in California. (*Appeal of Stevens* (86-SBE-100) 1986 WL 22770.) Here, where benefits are earned in part for California employment, vacation days are attributed to California in the same proportion as days worked within and without of California. However, because appellants have not provided evidence that they spent more than 137 days outside of California, there is no need to apportion appellants' vacation days.

sections 19104 (pertaining to unreasonable error or delay by FTB in the performance of a ministerial or managerial act), 19112 (pertaining to extreme financial hardship caused by significant disability or other catastrophic circumstance),[3] or 21012 (pertaining to reasonable reliance on the written advice of FTB). (*Ibid*.) OTA's jurisdiction in an interest abatement case is limited to determining whether FTB's failure to abate interest was 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, FTB exercised its discretion arbitrarily, capriciously, or without sound basis in fact or law. (*Appeal of Gorin*, 2020-OTA-018P.)

Appellants request interest abatement from August 23, 2023, to the present date, on the grounds that FTB's failure to process the Carollo letter before issuing the NOA constituted an unreasonable error or delay in the performance of a ministerial or managerial act. However, FTB's agreement to reduce its tax assessment based on the Carollo letter will correspondingly reduce the amount of interest assessed. Thus, FTB will abate interest, in part, by the amount of interest attributable to FTB's failure to timely process the Carollo letter. Moreover, the record does not support a finding that the remaining interest due is attributable to an error or delay by FTB. Therefore, FTB did not abuse its discretion in denying abatement of the remaining interest due. Accordingly, appellants have not established a basis to further abate interest.

[3] OTA does not have authority to consider whether interest relief may be provided under R&TC section 19112. (See *Appeal of Moy*, *supra*.)

HOLDINGS

1. Appellants have not established error in FTB's proposed assessment of additional tax.
2. Appellants have not established a basis to further abate interest.

DISPOSITION

FTB's action, as modified to reflect additional tax of $3,921, plus interest, is sustained.

Signed by:
Veronica I. Long
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Veronica I. Long
Administrative Law Judge

We concur:

Signed by:
Josh Lambert
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Josh Lambert
Administrative Law Judge

DocuSigned by:
Steven Kim
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Steven Kim
Administrative Law Judge

Date Issued: 3/26/2025