

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 250722602
C. OLSON)
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OPINION

Representing the Parties:

For Appellant: Jong H. Yim, CPA

For Respondent: Lawrence Xiao, Attorney

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, C. Olson¹ (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$2,430.18² for the 2021 taxable 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).

ISSUE

Has appellant established a basis to abate interest?

FACTUAL FINDINGS

1. Appellant filed a timely 2021 California Nonresident or Part-Year Resident Income Tax Return on October 10, 2022, reporting a pass-through entity (PTE) tax credit of \$50,486

¹ Although C. Olson filed the 2021 return with a joint filer, the joint filer did not sign the appeal and is not considered an appellant in this appeal.

² The Notice of Action denied appellant’s claim for abatement of interest in the amount of \$2,430.18 even though OTA’s record shows that appellant paid \$2,422.74 in interest. The difference is unexplained. On appeal, FTB does not seek the additional interest of \$7.44.

that was originally reported to appellant on a Schedule K-1³ as his distributive share of the entity's PTE elective tax paid, resulting in total tax of \$21,023. Appellant reported payments of \$54,947 and overpaid tax of \$33,924, which he elected to transfer to taxable year 2022. The effective date of transfer was April 15, 2022.

2. On March 1, 2025, appellant filed an amended tax return reducing his claimed PTE tax credit to \$36,693 (resulting in total tax of \$34,816.)
3. The difference between the total tax reported on appellant's original return (\$21,023) and on appellant's amended return (\$34,816) totals additional tax of \$13,793, which appellant paid on January 7, 2025. Because appellant had already transferred overpaid tax to his 2022 taxable year, FTB issued a State Income Tax Balance Due Notice on May 5, 2025, imposing interest of \$2,422.74, on the \$13,793 of tax that was not paid until January 7, 2025.
4. On May 19, 2025, appellant paid interest of \$2,422.74.
5. Appellant thereafter filed with FTB a claim for refund of the interest, which FTB denied in a Notice of Action dated June 17, 2025.
6. Appellant filed this timely appeal.

DISCUSSION

The imposition of interest is mandatory. (R&TC, § 19101(a); *Appeal of Moy*, 2019-OTA-057P.) Interest is charged from the due date of the tax payment to the date the tax is paid. (R&TC, §19101(a).) Interest is not a penalty but is compensation for the taxpayer's use of money after it should have been paid to the state. (*Appeal of Moy, supra.*) There is no reasonable cause exception to the imposition of interest and interest can only be waived in certain limited situations where authorized by law. (*Ibid.*) To obtain relief from interest, a taxpayer must qualify under R&TC sections 19104 (unreasonable error or delay), 19112 (extreme financial hardship), or 21012 (reasonable reliance on FTB's written advice). (*Ibid.*)

OTA has no jurisdiction to determine whether appellant is entitled to the abatement of interest under R&TC section 19112. (*Appeal of Moy, supra.*) The relief of interest under R&TC section 21012 is not relevant here, because FTB did not provide appellant with any written advice. Under R&TC section 19104(a)(1), FTB may abate all or a part of any interest on a deficiency to the extent that interest is attributable in whole or in part to any unreasonable error

³ The Schedule K-1 is not in OTA's record; however, the parties do not dispute this, and it is not addressed further.

or delay committed by FTB in the performance of a ministerial or managerial act. An error or delay can only be considered when: (1) no significant aspect of the error or delay is attributable to the taxpayer; and (2) after FTB has contacted the taxpayer in writing with respect to the deficiency or payment. (R&TC, § 19104(b)(1).) OTA has jurisdiction to determine whether FTB abused its discretion in denying interest abatement pursuant to R&TC section 19104. (R&TC, § 19104(b)(2)(B); *Appeal of Moy, supra.*)

Appellant concedes the additional tax and only disputes the imposition of interest. Appellant asserts that interest resulted from “unreasonable delay and conflicting communications by [FTB] in processing the PTE-tax election made by Downtown Storage Partners LLC (the LLC), of which the taxpayer is a partner.”

First, OTA notes that the taxpayer here is not the LLC; rather, as appellant notes, he is a partner. Whether or not FTB provided advice to the LLC as contended by appellant is not at issue here since the alleged advice was not offered to appellant. Appellant has not provided evidence that FTB provided written advice to either the LLC or to appellant himself, thus no relief is warranted pursuant to R&TC section 21012.

Second, appellant claims that the “back and forth correspondences” between FTB and the LLC were beyond his control, but appellant incorrectly included his share of an invalidly elected PTE tax (by the LLC) on his individual tax return. Appellant’s failure to adequately research and report the proper items on his individual tax return does not shift the burden to FTB to notify the LLC or appellant that the PTE election was invalid. Appellant’s ignorance of the law generally does not excuse his non-compliance with California tax laws. (*Appeal of Wright Capital Holdings, LLC, 2019-OTA-219P.*) Here, the LLC improperly made the PTE election on a September 6, 2022 superseding return even though the statute requires that the PTE tax election be made on a “timely filed original return.” (R&TC, § 19900(d).) Thus, it is largely due to the LLC’s error in attempting to make the PTE tax election on a superseding return rather than on the originally filed return, and appellant’s reliance on that incorrect election to claim his distributive share of the PTE tax, that caused a delay in appellant reporting the correct amount of tax for 2021. Appellant’s reliance on the LLC’s untimely PTE tax election and related Schedule K-1 reporting his distributive share of the PTE tax credit are reasonable cause type arguments. However, there is no reasonable cause exception to the imposition of interest. (*Appeal of Moy, supra.*) FTB had no reason to question the accuracy of appellant’s reported credit until it denied the LLC’s PTE tax election and the resulting PTE credit allocated to appellant. Therefore, the “delay” is in large part attributed to appellant as FTB reasonably relied on the amounts reported on appellant’s return.

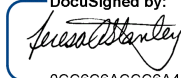
Lastly, interest can only be abated for an error or delay on FTB's part occurring after FTB has contacted appellant in writing with respect to the deficiency. (R&TC, § 19104(b)(1).) Appellant voluntarily filed an amended tax return on March 3, 2025, to reflect an updated PTE credit. FTB did not contact appellant prior to that date. Instead, FTB's first communication with appellant was a State Income Tax Balance Due Notice issued on May 5, 2025, reflecting interest owed by appellant, which appellant paid on May 19, 2025. There was, therefore, no unreasonable error or delay by FTB with respect to appellant after FTB first contact him. Accordingly, interest should not be abated.

HOLDING

Appellant has not established a basis to abate interest.

DISPOSITION

OTA sustains FTB's action denying appellant's claim for refund.

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Teresa A. Stanley
Administrative Law Judge

Date Issued: 2/23/2026