2026-OTA-253SCP
Nonprecedential

OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **S. SPOHR AND** **L. SPOHR**	OTA Case No. 240817285

OPINION

Representing the Parties:

For Appellants: L. Spohr

For Respondent: Vivian Ho, Attorney
Bradley J. Coutinho, Attorney Supervisor

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, S. Spohr and L. Spohr (appellants) appeal an action by respondent Franchise Tax Board (FTB) proposing additional tax of $2,884, an accuracy-related penalty of $576.80, a late-filing penalty of $425, and applicable interest for the 2018 taxable 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 panel member. (Cal. Code Regs., tit. 18, § 30209.05(b).) Office of Tax Appeals (OTA) Administrative Law Judge Teresa A. Stanley held an oral hearing for this matter in Sacramento, California on February 18, 2026. At the conclusion of the oral hearing, the record was closed, and this matter was submitted on the oral hearing record pursuant to California Code of Regulations, title 18, section 30209(b).

ISSUE

Have appellants established a basis to abate or waive interest in addition to that conceded by FTB at the oral hearing?

FACTUAL FINDINGS

1. Appellants timely filed a 2018 California Resident Income Tax Return (Return) reporting an overpayment of $1,185. FTB accepted the return as filed and offset $178 of

appellants' refund and transmitted it to the DMV on October 17, 2019. FTB refunded the remaining $1,006 to appellants on March 1, 2020.

2. FTB received information from the IRS indicating that appellants received an unreported pension or annuity distribution of $25,000 in taxable year 2018.

3. FTB issued a Notice of Proposed Assessment (NPA) increasing appellants' taxable income by $25,000 and proposing to assess additional tax of $2,884, which included an addition to tax of $625, based on the $25,000 early distribution from a qualified retirement plan prior to appellants attaining age 59-1/2. The NPA also proposed to assess an accuracy-related penalty, a late-filing penalty, and interest.

4. On November 2, 2023, appellants filed an amended Return that included the distribution of $25,000 and an early distribution addition to tax of $375 because they used the pension or annuity distribution to purchase their first home.[1]

5. On May 28, 2024, FTB acknowledged appellants' amended return but did not accept it as filed since appellants' revised federal adjusted gross income (AGI) did not match the federal AGI reported on the amended Return.

6. FTB issued a Notice of Action on July 23, 2024, affirming its NPA.

7. On appeal, both parties conceded that the additional tax owed by appellants is $2,634,[2] including a reduction of the early distribution penalty from $625 to $375. FTB also agrees to abate both the accuracy-related and late-filing penalties. Thus, for the oral hearing, the only remaining issue was interest waiver or abatement.

8. At the oral hearing held on February 18, 2026, FTB conceded to suspend interest from November 19, 2022, through September 15, 2023, pursuant to R&TC section 19116(b)(2).

DISCUSSION

If any amount of the tax is not paid by the due date for the return, interest is required to be imposed from the payment due date until the date the taxes are paid. (R&TC, § 19101(a).) Interest is not a penalty but is compensation for the taxpayer's use of money which should have been paid to the state. (*Appeal of Balch*, 2018-OTA-159P.) Imposition of interest is mandatory,

[1] Internal Revenue Code (IRC) section 72(t)(2)(F) provides that the 10 percent additional tax on early distributions from qualified retirement plans does not apply to distributions to first-time homebuyers. Qualified first-time homebuyer distributions for any taxable year shall generally not exceed $10,000. (IRC, § 72(t)(8)(B)(i). California incorporates IRC section 72 into law pursuant to R&TC section 17085, which modifies the amount of the additional tax to 2.5 percent.

[2] This total includes the $1,185 initially used to offset appellants' DMV liability ($178) plus the amount refunded to appellants ($1,006).

and it can only be abated in certain limited situations when authorized by law. (R&TC, § 19101(a); *Appeal of Balch*, *supra*.) There is no reasonable cause exception to the imposition of interest. (*Appeal of Moy*, 2019-OTA-057P.) To obtain relief from interest, appellants must generally qualify under R&TC section 19104, 19112, or 21012. (*Ibid*.) In addition, R&TC section 19116(a) provides that FTB shall suspend interest where a taxpayer files a return and FTB does not provide a notice to the taxpayer specifically stating the taxpayer's liability and the basis of the liability before the close of the "notification period." The "notification period" means the 36-month period beginning on the later of the date the return is filed or the due date of the return without regard to extensions. (R&TC, § 19116(b).) Pursuant to this provision, FTB agrees on appeal to suspend interest from November 19, 2022, through September 15, 2023.

Appellants contend that they should not have to pay interest after they filed their amended Return, which FTB initially refused to accept, requiring them to file this appeal. FTB conceded that a portion of the accrued interest will be suspended pursuant to R&TC section 19116(b)(2), and appellants do not otherwise argue that any other statutory provisions (i.e., R&TC sections 19104, 19112, or 21012) apply to them. Thus, appellants have not established a basis to waive or abate interest in addition to that conceded by FTB.

HOLDING

Appellants have not established a basis to abate or waive interest in addition to that conceded by FTB at the oral hearing.

DISPOSITION

As conceded by FTB on appeal: (1) the proposed additional tax is reduced to $2,634, including a reduction to the early distribution addition to tax from $625 to $375; (2) the accuracy-related and late-filing penalties are abated; and (3) interest is suspended from November 19, 2022, through September 15, 2023. OTA otherwise sustains FTB's proposed assessment of additional tax and interest.

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Teresa A. Stanley
Administrative Law Judge

Date Issued: 3/23/2026