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7 **BOARD OF EQUALIZATION**
8 **STATE OF CALIFORNIA**
9

10 In the Matter of the Appeal of:) **HEARING SUMMARY**
11) **PERSONAL INCOME TAX APPEAL**
12 **JOHN NELSON AND**) Case No. 469840
13 **IVY NELSON¹**)
14 _____)

	<u>Year</u>	<u>Claim For Refund²</u>
	2004	\$746.77

18 Representing the Parties:

19 For Appellants: Rita Madgett-Scott, Representative
20 For Franchise Tax Board: Dee Garcia, Legal Analyst
21

22 **QUESTION:** Whether appellants' taxable pension and annuity income received in 2004 is
23 subject to the California Personal Income Tax?
24

25 ¹ Appellants reside in Fremont, Alameda County.

26 ² This amount is the claim for refund amount in appellant's Appeal Letter. According to respondent's Reply Brief (page 1,
27 paragraph 2), the amount of the claim is \$687.00 in tax plus \$63.25 in interest through the November 6, 2006 receipt by the
28 Franchise Tax Board of appellants' payment of the Notice of Proposed Assessment (NPA) amount of \$746.77 (\$687.00 in tax
plus \$59.77 in interest through October 13, 2006). In addition, as discussed *infra*, \$3.48 of the \$63.25 interest amount
remains unpaid, and interest is also owed on the \$3.48 unpaid interest.

1 HEARING SUMMARY

2 Background

3 Appellants timely filed their 2004 California resident personal income tax return (540),
4 and on such return, subtracted on Schedule CA (“California Adjustments”) \$56,981 in pension and
5 annuity income that they reported as federally taxable pension and annuities income on Line 16b of their
6 federal 1040 return for 2004.³ According to appellants, they subtracted this amount on their California
7 540 Schedule CA based on one or more undated oral conversations their representative in this appeal
8 had with “a Franchise Tax Board representative” in which the representative claims: “I was informed
9 that pension or annuity income was not taxable to California.”⁴

10 After receiving appellants’ return, respondent reviewed it and determined that appellants’
11 subtraction under “California Adjustments” of \$56,981 of federal Line 16b taxable pension/annuity
12 income was contrary to California Revenue & Taxation Code (R&TC)⁵ sections 17041 and 17071.
13 Therefore, respondent issued a NPA that added back the subtracted \$56,981 to appellants’ California
14 taxable income. This adjustment increased appellants’ California income from a negative \$15,742 to a
15 positive \$41,239. Making only this adjustment, respondent issued the NPA for a proposed additional tax
16 of \$687,⁶ plus applicable interest.⁷ Respondent accepted all other aspects of appellants’ 2004 California
17

18 _____
19 ³ See Respondent’s Opening Brief, Exhibit A, sixth unnumbered page, Line 16b. As indicated in the 1099-R forms attached
20 to appellants’ 2004 return (Respondent’s Opening Brief, Exhibit A, fifth unnumbered page), the \$687.00 unpaid tax in the
21 NPA and NOA is the California personal income tax on three distributions to appellants of pension/annuity income: \$824.64
22 from the “IBM Personal Pension Plan”; \$30,576.00 in “gross annuity amount” from the “[federal] Office of Personnel
23 Management Retirement Services Program” (OPM); and \$25,579.68 in “taxable annuity”, also from OPM. These amounts
24 add up to \$56,980.32, which appellants reported as \$56,981.00 on federal 1040 line 16b.

25 ⁴ Appellants’ Appeal Letter.

26 ⁵ All statutory references are to the Revenue and Taxation Code unless otherwise noted.

27 ⁶ Respondent previously refunded \$1,080 to appellants for 2004, based on a claimed California taxable income of zero and
28 withholding of \$1,080. The claimed California income of zero resulted from federal Adjusted Gross Income (AGI) of
\$60,859, minus California subtraction adjustments of \$59,622, resulting in a California AGI of \$1,237. From this, appellants
subtracted \$16,979 in itemized deductions, which made their California income for 2004 a negative \$15,742. (See
Respondent’s Opening Brief, Exhibit A).

⁷ Now \$63.25, covering the period between the day after the return due date (April 16, 2005) through the first written contact
date (October 13, 2006 NPA issuance) in the amount of \$59.77 (the NPA amount), plus \$3.48 in interest accruing between
October 14, 2006 and November 6, 2006, when respondent received appellants’ payment of the \$746.77 NPA amount. Thus,
appellants appear to owe \$3.48 in unpaid interest, together with interest on such interest.

1 personal income tax return.⁸ Respondent did not impose any penalty on appellants, only unpaid tax and
2 interest.⁹

3 Contentions

4 Appellants' Contentions

5 Appellants do not argue that they had a legal right to subtract federally taxable pension
6 income from their California taxable income, even though they indisputably did so.¹⁰ Appellants argue
7 only that their representative relied on "erroneous" *oral* information allegedly given by respondent.¹¹

8 Their representative argues as follows in the Appeal Letter:

9 My clients entrusted me to prepare their returns and their returns were prepared based on
10 information given to me from a Franchise Tax Board representative. I was informed that
11 pension or annuity income was not taxable to California. If you were to refer to prior
12 years, you will find that pensions or annuities were taxable and the change in calculation
13 happened in 2003 and 2004 because erroneous information given [sic]. There is no way
14 this income would have not been taxable if not instructed to do so [sic] . . . It should be
15 obvious to the Franchise Tax Board and the Board of Equalization that I was given
16 erroneous information for filing their return. **Epecially since the returns were file [sic]**
in the same manner for two consecutive years. [sic]. (Bolding and underlining in
17 original).

18 As quoted above, appellants also claim that in 2003, they subtracted federal Line 16b pension/annuity
19 income on Schedule CA. In their Reply Brief, appellants through their representative, state as follows:

20 I am adamant about pursuing this case. As stated many time [sic] before, the returns [sic]
21 were completed based on incorrect information given by an FTB representative. Again
22 what are they employed for, what training are they given and why can't we rely on their
23 knowledge and/or expertise. . . [My clients'] taxes were computed in the same manner in
24 2003 based on the same information given by FTB representative. . . . The service

25 ⁸ This included \$2,641 in other subtractions as California Adjustments, all \$16,979 in claimed itemized deductions, and \$255
26 in exemption credits (two personal exemptions and one senior exemption). See Respondent's Opening Brief, page 1,
27 paragraphs 3-4, and Exhibit A.

28 ⁹ Appellants appear to think that respondent did so, since they argue in their Reply Brief that respondent's "interest *and*
penalty of \$59.77 had been computed on \$687.00 for 2004 the total of \$746.77 was paid. (emphasis added)" However,
respondent's NPA lists the \$59.77 as "interest to 10/13/06." See Respondent's Opening Brief, Exhibit B. According to
Respondent's Reply Brief (page 1, paragraph 2), an additional \$3.48 in interest accrued between October 14, 2006 and
respondent's November 6, 2006 receipt of appellants' payment of the NPA amount. As discussed above, \$3.48 of the \$63.25
in interest apparently remains unpaid.

¹⁰ See Respondent's Opening Brief, Exhibit A, page 1 (540, line 14) and page 3 (Schedule CA, line 16).

¹¹ Since the alleged erroneous advice was indisputably oral, R&TC section 21012 does not apply to this case. R&TC section
21012 allows for relief of tax, interest, and penalties based upon reasonable reliance on erroneous *written* advice under
specified circumstances.

1 provided has not improved. I have since learned to take the name and ID No. of
2 everyone I speak with... **Does it not seem strain [sic] that their taxes 2003 were**
3 **computed the same as 2004 and prior taxes were not. [sic]** (Bolding and underlining in
4 original).

5 Respondent's Contentions

6 Respondent argues that R&TC section 17041, subdivision (a), imposes tax on the taxable
7 income of every California resident, and that section 17071 incorporates the Internal Revenue Code
8 (IRC) section 61 definition of income that expressly includes (in subsections (a)(9) and (a)(11)) pension
9 and annuity income. Respondent argues that since no provision of the R&TC backs out pension and
10 annuity income from the definition of California taxable income, appellants were not allowed to subtract
11 it on Schedule CA.

12 Respondent argues that appellants' claim regarding advice received from an unnamed
13 FTB representative is an "estoppel-type argument, wherein [appellants] assert that FTB should be
14 estopped from assessing your clients' additional tax because you relied on oral statements from one of
15 FTB's representatives."¹² According to respondent, appellants bear the burden of proving that all four
16 elements of equitable estoppel exist, as follows:

- 17 • The FTB must be advised of the facts.
- 18 • The FTB must act in such a way that the taxpayer had a right to believe that the FTB intended
19 that its conduct be acted upon by the taxpayer.
- 20 • The taxpayer must be ignorant of the true facts.
- 21 • The taxpayer must show detrimental reliance.

22 (see Respondent's Opening Brief, Exhibit E [FTB Law Summary, "Equitable Estoppel", page 1, topics 1
23 (above) and 2 (burden of proof on taxpayer)]; *Appeal of Western Colorprints*, 78-SBE-071 (Aug. 15,
24 1978)). Moreover, respondent asserts that because tax liability is defined by the R&TC and not by FTB
25 employee oral representations, "[r]eliance on informal opinions offered by an FTB employee is not
26 sufficient to create estoppel against the FTB"¹³ because "if there is a conflict between such information

27 ¹² Respondent's Opening Brief, page 3, second full paragraph.

28 ¹³ Respondent's Opening Brief, page 3, fourth full paragraph; *Appeal of Virgil E. and Izora Gamble*, 76-SBE-053, May 4,
1976; *Appeal of Mary M. Goforth*, 80-SBE-158, Dec. 9, 1980.

1 and the law, the law must prevail.”¹⁴

2 As for appellants’ 2003 return, respondent notes that it imposed additional tax for 2003
3 that appellants protested and appealed to this Board in Case Number 393411. On December 11, 2007,
4 this Board sustained respondent,¹⁵ and denied rehearing on June 24, 2008.¹⁶

5 Respondent in its Reply Brief addresses appellants’ request in their reply brief for
6 abatement of interest and penalties. Respondent notes that there are no penalties in the NPA and NOA,
7 only interest. Respondent argues that interest is mandatory because it simply compensates the state for
8 the lost time value of the unpaid tax, and that interest may only be abated under the provisions of section
9 19104¹⁷, which in subdivision (b)(1) expressly precludes abatement of interest for any period prior to
10 respondent’s first written contact with appellants. Here, the first written contact occurred when the NPA
11 was issued on October 13, 2006. Thus, according to respondent, interest may be abated only for the 24
12 calendar days between October 14, 2006 and the November 6, 2006 receipt of appellants’ payment of
13 the NPA amount. In addition, respondent argues that appellants are required by section 19104,
14 subdivisions (a)(1) and (b)(1) to prove that their delay in paying the tax was caused, during this 24-day
15 period after the NPA was issued, by a ministerial or managerial act of respondent, which under federal
16 Treasury Regulation 301.6404-2(b) is defined as something on the order of a “procedural or mechanical
17 act[s] that do[es] not involve the exercise of judgment or discretion, and that occur[s] during the
18 processing of taxpayer’s case after all prerequisites to the act...have taken place”¹⁸ or “the temporary or
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21 ¹⁴ Respondent’s Opening Brief, page 4, paragraph 1.

22 ¹⁵ Board Minutes, December 11, 2007, page 322.

23 ¹⁶ Board Minutes, June 24, 2008, page 171.

24 ¹⁷ Appeals Division staff notes that interest may also be abated under two other R&TC provisions: (1) R&TC section 19112,
25 which is rarely invoked before this Board, but which allows the FTB to waive interest when the taxpayer suffers an “extreme
26 financial hardship caused by a significant disability or other catastrophic circumstance”; and (2) R&TC section 19116, which
27 requires the FTB to suspend the accrual of interest under specified circumstances for the 18 month period after the earlier of
28 the return due date or filing date. Neither provision is applicable here. Finally, the Katz-Harris Taxpayers Bill of Rights
allows relief (rather than mere abatement) of interest where the taxpayer relies on erroneous *written* advice from the FTB; see
R&TC section 21012. Here, it is undisputed that appellants did not request or receive written advice from the FTB, and that
the advice they claim to have received was oral.

¹⁸ Treasury Regulation 301.6404-2(b)(2)(ministerial acts).

1 permanent loss of records or the exercise of judgment or discretion relating to management of
2 personnel”¹⁹

3 Applicable Law

4 Section 17041, subdivision (a)(1) imposes the Personal Income Tax, defined in the statute
5 as a tax “. . . upon the entire taxable income of every resident of this state . . .”²⁰ Section 17071
6 expressly incorporates IRC section 61, which in subsections (a)(9) and (a)(11) thereof expressly states
7 that: “Except as otherwise provided in this subtitle, gross income means all income from whatever
8 source derived, including (but not limited to)...Annuities...[and] Pensions...” Hence, the federal 1040
9 on Line 16b requires taxpayers to report pension and annuity income in their federal adjusted gross
10 income, and the California 540 on line 13 requires entry of the federal adjusted gross income as the
11 starting point for determining California taxable income. On Line 14, taxpayers enter subtraction
12 amounts from Schedule CA, which includes 19 specific categories of income and one on Line 21-f
13 entitled “Other.” On Line 16 of Schedule CA, taxpayers are instructed to include in column A 1040
14 Line 16 pensions/annuities income, and to consult the Schedule CA instructions regarding any
15 subtractions or additions in columns B and C. Respondent’s 2004 “Instructions for Schedule CA
16 (540)”²¹ state as follows on pages 3-4 with specific reference to Line 16:

17 **Line 16 – Total Pensions and Annuities**

18 Generally, you will not make any adjustments on this line. However, if you received Tier
19 2 railroad retirement benefits or partially taxable distributions from a pension plan, you
20 may need to make the following adjustments.

21 If you received a federal Form RRB 1099-R for railroad retirement benefits and included
22 all or part of these benefits in taxable income in column A, enter the taxable benefit
23 amount in column B.

24 If you began receiving a retirement annuity between 7/1/86 and 1/1/87 and elected to use
25 the three-year rule for California purposes and the annuity rules for federal purposes,
26 enter in column C the amount of the annuity payments you excluded for federal purposes.

27 **Caution:** You may have to pay an additional tax if you received a taxable distribution
28 from a qualified retirement plan before reaching age 59 ½ and the distribution was not
rolled over into another qualified plan. See Form 540, line 36 instruction; or Form
3805P, Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored
Accounts.” (Bolding included in original).

19 Treasury Regulation 301.6404-2(b)(1)(managerial acts).

20 It appears undisputed that appellants lived in California during the year at issue.

21 Available at www.ftb.ca.gov, “Forms”, “Prior Tax Years”, “2004.”

1 The 2004 Schedule CA instructions, on page 1, refer taxpayers to FTB Publication 1005, “Pension and
2 Annuity Guidelines.” In the 2004 edition of this publication, respondent informs taxpayers as follows,
3 on page 2:

4 The California treatment of pensions, annuities, and IRAs is generally the same as the
5 federal treatment of such income. However, there are some differences between
6 California law and federal law that may cause the amount of your California distribution
7 income to be different than the amount reported for federal purposes. This publication
will identify the most common differences and explain how to report those differences on
your California return.

8 Two paragraphs later, Publication 1005 states: “**California generally conforms to federal law.** The
9 California treatment of pension and annuity income is generally the same as the federal treatment”
10 (Bolding in original). This paragraph identified bold-headlined “**Differences between California and**
11 **federal law**” as the following: Social Security and railroad retirement benefits; retirees using the “three-
12 year rule” for annuities starting between 1986 and 1987; some prior-year IRA deductions; and Health
13 Savings Accounts.” Finally, Publication 1005 in the immediately succeeding paragraph noted that “[i]f
14 your pension plan invested in U.S. Government securities or in mutual funds that invested in U.S.
15 Government securities, *you may not reduce the taxable portion of your pension distribution by the*
16 *amount of interest attributable to the U.S. Government securities.*” (Emphasis added). In the 12 pages
17 of Publication 1005, there is no language that instructs or authorizes taxpayers to simply subtract
18 pension and annuity income on Schedule CA, Line 16, column B or anywhere else.

19 California law imposes interest from the date on which any personal or corporate income
20 tax is due until the date the entire balance is paid in full. (R&TC section 19101, subd. (a).) Interest is
21 paid, assessed, and collected in the same manner as the underlying tax. (*Id.*, subd. (c).) The Board has
22 long recognized that the assessment of interest on any unpaid tax is mandatory. (*Appeal of Amy M.*
23 *Yamachi*, 77-SBE-095, June 28, 1977.) The Board has also recognized that interest is not a penalty, but
24 is simply compensation to the state for the lost time-value of money received after the due date. (*Appeal*
25 *of Alan F. and Rita K. Shugart*, 2005-SBE-001, July 1, 2005.) As such, the law provides no reasonable
26 cause exception to the imposition of interest. (See *Id.*) While there is no general reasonable cause
27 exception to interest, as discussed in footnote 17 above the Legislature has enacted three provisions that
28 provide limited relief from interest under specified circumstances (see footnote 16). R&TC section

1 19104, which this Board has discussed in detail in prior opinions, allows the FTB to abate interest to the
2 extent that interest is attributable to an error or delay by an employee of the FTB “in performing a
3 ministerial or managerial act” (see Rev. & Tax Code, § 19104, subd. (a); *Appeal of Ernest J. Teichert*,
4 99-SBE-006, Sept. 29, 1999; *Appeal of Michael and Sonia Kishner*, 99-SBE -007, Sept. 29, 1999;
5 *Appeal of Alan F. and Rita K. Shugart, supra.*), but never for any period of time prior to the first written
6 contact by FTB to the taxpayer (pursuant to Rev.& Tax Code, § 19104, subdivision (b)(1)).

7 Federal Treasury Regulation²² 301.6404-2(b)(1) defines “managerial act” as meaning:

8 “an administrative act that occurs during the processing of a taxpayer’s case involving the
9 temporary or permanent loss of records or the exercise of judgment or discretion relating
10 to management or personnel. A decision concerning the proper application of federal tax
11 law (or other federal or state law) is not a managerial act. Further, a general
12 administrative decision, such as the IRS’s decision on how to organize the processing of
13 tax returns or its delay in implementing an improved computer system, is not a
14 managerial act for which interest can be abated.”

15 Federal Treasury Regulation 301.6404-2(b)(2) defines “ministerial act” as meaning:

16 “a procedural or mechanical act that does not involve the exercise of judgment or
17 discretion, and that occurs during the processing of a taxpayer’s case after all
18 prerequisites to the act, such as conferences and review by supervisors, have taken place.
19 A decision concerning the proper application of federal tax law (or other federal or state
20 law) is not a ministerial act.”

21 STAFF COMMENTS

22 Pension and Annuity Income

23 Appellants made these same arguments through the same representative in an appeal to
24 the Board from respondent’s assessment of unpaid tax and interest on their 2003 return, and the Board
25 unanimously sustained respondent²³ and denied rehearing.²⁴

26 Interest Abatement

27 For this appeal regarding 2004, assuming appellants meet their burden of proof, the most
28 they can recover from respondent is \$3.48 of interest on the unpaid tax that accrued in the 24 calendar

25 ²² Because section 19104 is patterned after federal legislation on the same subject, the interpretation and effect given the
26 federal provision by the federal courts and administrative bodies are relevant in determining the proper construction of the
27 California statute. *Andrews v. Franchise Tax Board* (1969) 275 Cal.App.2d 653, 658; *Rihn v. Franchise Tax Board* (1955)
131 Cal.App.2d 356, 360.

28 ²³ Board Minutes, December 11, 2007, page 322. The name of Rita Madgett-Scott is listed as appellants’ representative.

²⁴ Board Minutes, June 24, 2008, page 171. The name of Rita Madgett-Scott is listed as appellants’ representative.

1 days between October 14 and November 6 of 2006, which appellants do not appear to have paid.²⁵ It
2 appears that the unpaid tax amount of \$687 cannot be recovered under the equitable estoppel doctrine as
3 interpreted in three published California court decisions discussed below (two of which involve this
4 Board), and \$59.77 of the \$63.25 in interest accrued before respondent first contacted appellants in
5 writing, so \$59.77 is barred from abatement by R&TC section 19104, subdivision (b)(1).

6 Equitable Estoppel

7 Even if appellants can meet their burden of proving equitable estoppel, such doctrine
8 would not prevent appellants from being required to pay the \$687 tax amount required by the R&TC.
9 As the court explained in *Fischbach & Moore, Inc. v. State Bd. of Equalization* (1981) 117 Cal.App.3d
10 627, 632:

11 “...we agree, that the state is not estopped from collecting a tax which is due and owing,
12 even though the state’s representatives may have previously adopted an incorrect
13 interpretation of the law and advised the public that no taxes would become due on a
14 particular transaction or transactions. Under well-settled rules of law state officers and
state agencies have no power to estop the state from collecting a validly owed tax.”
(Citations omitted).

15 Thus, the tax amount in the NPA and NOA is not subject to the equitable estoppel doctrine. There are
16 no penalty amounts in the NPA or NOA.

17 As a matter of law, but not on these facts, the equitable estoppel doctrine does apply to
18 the \$63.25 interest amount, as the court explained in *Fischbach & Moore, Inc. v. State Bd. of*
19 *Equalization, supra*, 117 Cal.App.3d 627, 632:

20 “However, our conclusion that the state may collect a tax which is due and owing does
21 not necessarily imply that it may collect interest on the tax.”

22 The court cited approvingly *Market St. Ry. Co. v. Cal. St. Bd. Equal.* (1955) 137 Cal.App.2d 87, and
23 stated as follows, again at 117 Cal.App.3d 627, 632:

24 “There the State Board of Equalization advised Market Street Railway that no tax would
25 become due on the sale of its tangible personal property to the City of San Francisco. At
26 that time an interpretive ruling of the board supported this conclusion. Later, the board
sought to collect tax, penalties, and interest on the sale, asserting that its former ruling

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28 ²⁵ They paid the full NPA amount of \$687.00 in tax and \$59.77 in interest through October 13, 2006, on November 6, 2006.
Appeals Division staff is not aware whether respondent has contacted appellants regarding the remaining \$3.48 in accrued
interest.

1 had been erroneous. The court upheld the board on its collection of the tax, but found the
2 latter estopped from collecting penalties and interest, in that the taxpayer had justifiably
relied on information from the board when it failed to file a return and pay the tax.”

3 The *Fischbach & Moore* court further explained²⁶, citing *La Societe Francaise v. Cal. Emp. Com.*
4 (1943) 56 Cal.App.2d 534, that:

5 “[a] taxpayer should pay as much as it would have had to pay originally...but it should
6 not pay more because it relied on an erroneous administrative ruling”

7 and that “[f]rom these two cases we deduce a general rule that a taxpayer is not required at its peril to
8 know that a state’s administrative rulings are erroneous.” (117 Cal.App.3d at 633.) In *Fischbach &*
9 *Moore*, supra, 117 Cal.App.3d at 633, the court remanded and directed the trial court to refund all
10 interest amounts collected, because “[a]ll parties acted in reliance on a specific declaration by the board
11 that no tax would be payable.”

12 In contrast, here there was no specific ruling by respondent that pension and annuity
13 income could be subtracted on Schedule CA. To the contrary, respondent’s Schedule CA instructions
14 and Publication 1005 for both 2004 and 2003²⁷ expressly inform taxpayers and their representatives’
15 that pension and annuity income is taxable in California except for specific exclusions that do not apply
16 to appellants’ IBM and federal OPM pension distributions. As recipients of the annually mailed FTB
17 tax form booklets, which contain the Schedule CA instructions, appellants and their representative
18 cannot be said to have been “ignorant of the true facts”, which is one of the four sequential and essential
19 elements of equitable estoppel that appellants bear the burden of proving.²⁸

20 If any FTB representative orally advised appellants or their representative contrary to the
21 written Schedule CA instructions and Publication 1005 explanation, not to mention R&TC 17041, such
22 advice cannot estop the FTB for the reason explained by the court in *Fischbach & Moore*, supra:

23 “The reasons behind such a rule are deeply imbedded in our governmental structure,
24 which is designed to discourage corrupt collusion between government officers and
taxpayers to the prejudice of the state’s revenues.”

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26 ²⁶ At 117 Cal.App.3d 633.

27 ²⁷ www.ftb.ca.gov, “Forms”, “Prior Tax Years”, “2003.”

28 ²⁸ *Strong v. County of Santa Cruz* (1975) 15 Cal.3d 720, 725; *Appeal of Priscilla L. Campbell*, 79-SBE-035 (Feb. 8, 1979);
Appeal of Adrian K. and Dorothy S. Smith, 74-SBE-045 (Oct. 7, 1974).

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(117 Cal.App.2d at 632.) Moreover, appellants have not proffered any evidence that such representations were made, such as a date-specific declaration under penalty of perjury from their representative (who instead generally claims that she participated in a conversation or conversations with FTB representatives on an unspecified date or dates in which FTB representatives allegedly stated that pension and annuity income was not taxable in California).²⁹

Finally, the interest abatement statute – R&TC section 19104, subdivision (b)(1) – expressly bars abatement of interest for the \$59.77 in interest that accrued during the 546 calendar days between April 16, 2005 day after the return due date and the October 13, 2006 issuance of the NPA. Thus, the only period for which interest may be abated is interest for the 24-day period between October 14 and November 6 of 2006, which is \$3.48. Because these 24 days are the only interest accruing days not barred from interest abatement by R&TC section 19104(b)(2), interest may only be abated in the amount of \$3.48, assuming appellants met the requirement of demonstrating that one or more “ministerial” or “managerial” acts of respondent prevented them from timely paying the \$687.00 in tax between October 14 and November 5 of 2006. Appellants may wish to explain at the oral hearing whether any such act by respondent prevented them from paying the \$687 in tax between these dates.

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Nelson John Ivy_smk

²⁹ See Appellants’ Appeal Letter, signed by the representative.