

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
TIMOTHY SCOTT BARIL

) OTA Case No. 18010713
)
) Date Issued: November 2, 2018
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)
)

OPINION

Representing the Parties:

For Appellant: Timothy Scott Baril
For Respondent: Desiree Macedo, Graduate Student Asst.
For Office of Tax Appeals: Josh Lambert, Tax Counsel

J. MARGOLIS, Administrative Law Judge: Pursuant to Revenue and Taxation Code section 19324,¹ Timothy Scott Baril (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$2,826² for tax year 2015.

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

ISSUES

1. Whether appellant is liable for the late payment penalty for his 2015 tax year.
2. Whether appellant is entitled to a refund of interest paid upon his 2015 tax liability.

FACTUAL FINDINGS

1. Appellant and his spouse failed to pay their 2015 tax liability by the due date, April 18, 2016.³

¹ Unless otherwise indicated, all statutory (“section” or “§”) references are to the Revenue and Taxation Code.

² All dollar amounts are rounded to the nearest dollar.

³ Since April 15, 2016, fell on Emancipation Day, the federal and state due date was extended to the next business day, April 18, 2016, pursuant to Government Code section 6707.

2. On April 22, 2016, appellant and his spouse attempted to make a \$39,000 estimated tax payment towards their 2015 California tax liability using FTB's online payment program. However, they provided FTB with an invalid bank routing number and, as a result, the payment was dishonored.
3. On June 27, 2016, appellant and his spouse timely filed (pursuant to an extension) their 2015 California joint income tax return. On the return, they reported a California tax liability of \$51,702, and claimed that only \$413 remained due after application of income tax withholdings of \$12,289 and the previously referenced estimated tax payment of \$39,000.
4. On July 5, 2016, appellant submitted a payment to satisfy the balance due of \$39,413.
5. Because appellant and his spouse failed to timely pay their 2015 tax liability, FTB issued a notice to them on September 28, 2016, informing them that they were liable for a late payment penalty of \$2,562 plus interest of \$264.
6. Appellant and his spouse paid the penalty and interest determined by FTB on October 10, 2016.
7. Appellant and his spouse submitted a claim for refund of the amount paid on FTB 2917, entitled "Reasonable Cause – Individual and Fiduciary Claim for Refund." On that claim form, they asserted that there was reasonable cause for their late payment, in that they had attempted to pay the tax liability using FTB's online web tool, and FTB never notified them that their attempted payment had not been processed.⁴
8. FTB denied the claim on the ground that appellant and his spouse had failed to establish the existence of reasonable cause.
9. Appellant submitted a timely appeal from FTB's claim denial. The appeal letter states, in pertinent part, as follows:

... I did make an attempt to make payment using the on-line services but due to a personal keying error, I inadvertently typed in an incorrect routing number, payment was not processed on time. This is the first time that I have used the www.ftb.ca.gov website and assumed the payment would be processed once you had the opportunity to review my file. I take full accountability for the error and lack of understanding of the process but ask that you consider reducing my penalty.

⁴ Appellant's claim disputes only the imposition of the penalty, not the computation of the penalty amount.

The appeal was signed by, and references only, the appellant (and not his spouse).

DISCUSSION

Issue 1. Whether appellant is liable for the late payment penalty for his 2015 tax year.

Section 19132 provides that a late payment penalty shall be imposed when a taxpayer fails to pay the amount shown as due on the return on or before the date prescribed for payment. However, the late payment penalty will not apply if the taxpayer establishes that the failure to make a timely payment of tax was due to a reasonable cause and not due to willful neglect. (§ 19132 (a)(1).) Reasonable cause exists if it can be shown that the taxpayer acted as an ordinarily intelligent and prudent businessperson would have acted under similar circumstances. (*Appeal of Howard G. and Mary Tons*, 79-SBE-027, Jan. 9, 1979.)⁵ The burden of proof is on the taxpayer to show that the failure to make a timely payment was the result of reasonable cause and not due to willful neglect, and the late payment occurred despite the exercise of ordinary business care and prudence. (*Appeal of Roger W. Sleight*, 83-SBE-244, Oct. 26, 1983; *Appeal of M.B. and G.M. Scott*, 82-SBE-249, Oct. 14, 1982.)

Appellant's claim for refund of the late payment penalty is based on his contention that the late payment was attributable to reasonable cause and not to willful neglect. Appellant points to the fact that he made an input error in keying in his bank account information while using FTB's online payment tool. As a result, his April 22, 2016, attempt to pay his 2015 California income tax was unsuccessful. After inputting the wrong account information, appellant assumed that his bank had transmitted the payment and that he would be contacted by FTB if there was any problem with the payment. It was not until July 5, 2015, several months after his tax payment was due, that appellant paid the amount that was due.

We hold these circumstances do not show reasonable cause for appellant's late payment. We note that, at the time appellant attempted to pay the balance due on his 2015 return, his payment already was four days overdue, and that lateness alone generated the bulk of the penalty.⁶ Furthermore, applying the prudent businessperson standard, we believe a prudent

⁵ Precedential decisions of the State Board of Equalization, designated by "SBE" in the citation, are available on that board's website at <<http://www.boe.ca.gov/legal/legalopcont.htm#boeopinion>>.

⁶ Under section 19132, subd. (a)(2)(A), a \$1,971 late payment penalty, equal to five percent of the underpaid amount (\$39,413 x 5% = \$1,971) became due immediately when the payment was not timely made. The balance of the penalty, totaling \$591.20, accrued monthly under section 19131, subd. (a)(2)(B), until the \$49,413 amount remaining due was finally paid on October 10, 2016.

businessperson would have avoided the error by double-checking the bank routing number entered on the online payment program, and promptly obtaining confirmation (from FTB or appellant's bank) that the attempted payment of \$39,000 had been successfully transmitted. Accordingly, we reject appellant's claim that there was reasonable cause for his late payment of tax.

Issue 2. Whether appellant is entitled to a refund of interest paid upon his 2015 tax liability.

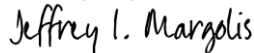
Appellant's refund claim purported to encompass the entire \$2,826 amount that was paid to FTB on October 10, 2016, which amount included \$264 of interest. However, appellant's claim for refund did not expressly address the interest liability, or identify any grounds upon which interest might be abated. Because a claim for refund must specify the grounds upon which it is based (see § 19324), we are "without jurisdiction to consider grounds not set forth in the claim." (*Atari, Inc. v. State Board of Equalization* (1985) 170 Cal.App.3d 665, 672 ["The claim for refund delineates and restricts the issues to be considered in a taxpayer's refund action."].) Nevertheless, we note that imposition of interest on a tax deficiency is mandatory, and there is no reasonable cause exception to the imposition of interest. (§ 19101(a); *Appeal of Audrey C. Jaegle*, 76-SBE-070, June 22, 1976.) Although in certain limited circumstances interest may be abated pursuant to various provisions of the Revenue and Taxation Code (see §§ 19104, 21012, and 19112), appellant has not attempted to show that he qualifies for abatement under any of those provisions and he does not appear to qualify. Accordingly, we are not able to abate interest in this matter.

HOLDINGS


1. Appellant is liable for the late payment penalty determined by FTB with respect to his 2015 tax year.
2. Appellant is not entitled to abatement of interest.


DISPOSITION

FTB's action in denying appellant's claim for refund is sustained.

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Jeffrey I. Margolis
Administrative Law Judge

We concur:

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Teresa A. Stanley
Administrative Law Judge

DocuSigned by:

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Neil Robinson
Administrative Law Judge