

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of:	) OTA Case No. 18042969
	)
<b>LEONID REINGOLD AND</b>	) Date Issued: November 20, 2018
<b>MARINA REINGOLD</b>	)
	)
_____	)

**OPINION**

Representing the Parties:

For Appellants:	Leonid Reingold & Marina Reingold
For Respondent:	Jean M. Cramer, Tax Counsel IV

A. ROSAS, Administrative Law Judge: Pursuant to California Revenue and Taxation Code section 19324,<sup>1</sup> Leonid and Marina Reingold (Appellants) appeal an action by the Franchise Tax Board (FTB) denying their claim for refund for \$196.56 for the 2016 tax year. Appellants waived their right to an oral hearing, and therefore we decide this matter based on the written record.

**ISSUE**

Have Appellants established that their failure to make timely payment of their total 2016 California income tax liability was due to reasonable cause and not willful neglect?

**FACTUAL FINDINGS**

1. On October 14, 2017, Appellants filed a timely 2016 California Resident Income Tax Return (Form 540), showing a California adjusted gross income of \$131,665 (with no estimated taxes or other payments), and reporting a tax due of \$2,457.

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<sup>1</sup> Statutory references are to the California Revenue and Taxation Code, unless otherwise noted.

2. Appellants did not pay the \$2,457 tax due by April 18, 2017.<sup>2</sup> Instead, they made the \$2,457 tax payment on October 15, 2017.
3. In November 2017, FTB sent Appellants a Notice of Tax Return Change – Revised Balance, which notified Appellants that FTB had imposed a \$196.56 late-payment penalty plus \$50.75 of interest. In December 2017, Appellants paid \$247.29 (two cents less than the full amount), which FTB accepted as payment in full, and Appellants also filed a timely claim for refund.
4. FTB denied Appellants’ claim for refund, and Appellants filed this timely appeal.

### DISCUSSION

An FTB determination is presumed correct, and a taxpayer has the burden of proving it to be erroneous. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509, 514.) FTB allows an automatic six-month extension to file a California tax return if the return is filed within six months of the original due date. (§ 18567(a).) An extension of time to file a tax return, however, is not an extension of time to pay; the tax is still due on the original due date of the return without regard to the extension to file. (§ 18567(b).) The law requires FTB to impose a penalty for the late payment of tax when a taxpayer fails to pay the amount of tax due by the due date, unless the taxpayer establishes that the late payment was due to reasonable cause and not willful neglect. (§ 19132.) The taxpayer bears the burden of proving both conditions existed. (*Appeal of Friedman*, 2018-OTA-077P, July 20, 2018.)

Although Appellants filed their 2016 California income tax return within the automatic six-month extension period, they did not pay their remaining 2016 California tax liability of \$2,457 by the due date. The burden of proof is on the taxpayer to show reasonable cause exists to support abatement of the late payment penalty. (*Appeal of Friedman, supra.*) In order to establish reasonable cause for the late payment, a taxpayer must show that the failure to timely pay the amount due occurred despite the exercise of ordinary business care and prudence. (*Ibid.*) The taxpayer’s reason for failing to make timely payment of the tax due must be such that an ordinarily intelligent and prudent businessperson would have acted similarly under the

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<sup>2</sup> Because April 15th fell on a Saturday and Emancipation Day was celebrated in Washington, D.C., on April 17th, both federal and California returns and payments normally due on April 15th were due on Tuesday, April 18, 2017.

circumstances. (*Ibid.*) The failure to timely remit the balance due on a tax liability caused by an oversight does not, by itself, constitute reasonable cause. (*Ibid.*)

Here, Appellants' evidence does not establish that the failure to timely pay the amount of tax due occurred despite the exercise of ordinary business care and prudence. Appellants argue: "I was not aware that there would be any income to report for 2016. So I did not know that I had to pay anything since I only found out there was a gain when I was filing the actual documents." Appellants reference "a sale of a business which we were not anticipating to occur." According to Appellants, this "income never actually materialized and was never received . . . ."

Appellants' position is unclear. They failed to submit any documentation regarding this "sale of a business," and they do not explain their statement that "income never actually materialized." But what is clear is that in the only tax return available (their Form 540 filed on October 14, 2017), Appellants reported California adjusted gross income of \$131,665, without any estimated taxes or other payments, and they had a tax due of \$2,457.

In essence, Appellants reported income that they claim they did not anticipate, but they have not explained why, having reported the income, they did not pay the tax due on that income. They stated that "this fact is being amended in our current filing," but to our knowledge Appellants have not filed an amended 2016 California income tax return. Although the statute of limitations is still open for Appellants to file such an amendment, we cannot speculate as to how a future amended return may or may not affect the previously-reported tax of \$2,457.

Thus, based on the limited evidence provided, Appellants have not established that the late payment was due to reasonable cause and not willful neglect.

Additionally, Appellants point out that the Internal Revenue Service (IRS) abated a federal late-payment penalty imposed against them for 2016 based solely on Appellants' good history of timely filing and timely paying. However, unlike the IRS, California does not abate late-filing penalties based solely on a taxpayer's good filing and payment history.<sup>3</sup> Instead, the law provides that the California late-filing penalty shall apply unless reasonable cause is shown. (§ 19131(a).)

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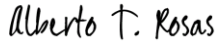
<sup>3</sup> The California Legislature has considered and declined to adopt bills that would change California law to allow a first-time abatement for taxpayers with a history of filing and payment compliance. (See Assem. Bill No. 1777 (2013-2014 Reg. Sess.).)

HOLDING


Appellants have not established that their failure to timely pay their total 2016 California income tax was due to reasonable cause and not willful neglect.


DISPOSITION

We sustain FTB's action in full.

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Alberto T. Rosas  
Administrative Law Judge

We concur:

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Michael Geary  
Administrative Law Judge

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Teresa A. Stanley  
Administrative Law Judge