

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)	OTA Case No. 18032407
)	Date Issued: January 8, 2019
ERNESTO CARRASCO AND)	
KAREN A. MORGAN)	
<hr style="border: 0.5px solid black;"/>)	

OPINION

Representing the Parties:

For Appellants:	Ernesto Carrasco, Karen A. Morgan
For Respondent:	Greg W. Heninger, Program Specialist II

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code section 19324,¹ Ernesto Carrasco and Karen A. Morgan (appellants) appeal an action by the Franchise Tax Board (FTB or respondent) denying appellants’ claim for refund of \$264.15 for the 2015 tax year.

Appellants waived their right to an oral hearing; therefore, we decide the matter based on the written record.

ISSUES

1. Are appellants entitled to a refund of the late-filing penalty?
2. Are appellants entitled to a refund of interest?
3. Are appellants entitled to a refund of installment payment program fees?²

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

² Appellants requested a refund of “collection cost[s].” Respondent’s second Notice of State Income Tax Due included \$68 designated as “collection costs.” However, the \$68 is reflected in respondent’s document entitled Tax Year Current Values Display, as “IA [installment agreement] fee”; therefore, references to “collection costs” herein will pertain to the installment agreement fee.

FACTUAL FINDINGS

1. Appellants filed their 2015 California resident income tax return (Form 540) late, on October 24, 2016.
2. The 2015 tax return reported tax due of \$632. Appellants did not remit payment of the tax with the return.
3. On November 14, 2016, respondent issued a Notice of State Income Tax Due that showed \$632 in tax due, a late-filing penalty of \$158, plus applicable interest, for a total of \$803.91.
4. Appellants submitted an Installment Agreement (IA) request on November 17, 2016. Respondent rejected the IA request on December 6, 2016, because it was incomplete.
5. Appellants submitted a second IA request, which respondent received on January 9, 2017.
6. On January 19, 2017, respondent approved appellants' second IA request. In the Installment Agreement – Electronic Funds Transfer (EFT) Approval notice, respondent informed appellants that a \$34 fee would be added to their tax account balance in order to establish the IA. In addition, the notice stated that respondent would withdraw \$30 from appellants' bank account, each month beginning February 16, 2017, by EFT. The notice indicated that interest and penalties would continue to accrue until appellants' account was paid in full.
7. Seven payments of \$30 were made through EFT, from February 2017 through August 2017, for a total of \$210.
8. Respondent's payment records indicate that on September 10, 2017, appellants attempted to make an online payment of \$684.67. That attempted payment was dishonored by appellants' bank. Respondent did not attempt to initiate any additional \$30 EFT withdrawals.³
9. Respondent issued a second Notice of State Income Tax Due on September 27, 2017, showing a balance due of \$685.51, which included the \$632 tax for 2015, the \$158 late-

³ Respondent contends in its opening brief that, because of the attempted payment on September 10, 2017, appellants' account showed a balance owing of zero, and therefore, no further EFT withdrawals were attempted. When the check was dishonored, respondent claims it reinstated appellants' tax liability for 2015. Although the record does not reflect this, appellants did not contest respondent's assertions.

- filing penalty, \$68 in “collection costs,” and interest, less credits for payments made by appellants.
10. Mr. Carrasco called respondent on October 12, 2017, to inquire why appellants had a balance owing for their 2015 taxes. Respondent’s records reflect it informed Mr. Carrasco that his bank had dishonored his attempted payment in September 2017. Appellants paid the outstanding balance of \$685.81 the same day.
 11. On October 15, 2017,⁴ appellants submitted a Reasonable Cause – Individual and Fiduciary Claim for Refund, requesting a refund of \$264.15.⁵ Appellants explained that respondent failed to initiate the September 2017 withdrawal of \$30, and that was “the reason [they] were charged the fee’s [sic] listed above.” Since they were not notified of any issue with payments, they “strongly believe[d] there was no fault on [their] part.” Appellants submitted a bank statement for August 22, 2017, through September 22, 2017, which did not show a \$30 payment to FTB. Appellants submitted four additional bank statements (from the same checking account) showing monthly payments of \$30 to FTB prior to September 2017.
 12. Respondent denied appellants’ claim for refund on November 6, 2017. This timely appeal followed.
 13. Respondent attached a “Tax Year Current Values Display” for appellants’ 2015 taxable year to its opening brief that reflects debits and credits to appellants’ 2015 tax account, including a late-filing penalty of \$158, total interest charged of \$39.17, and two IA fees of \$34 (totaling \$68 for IA fees).

DISCUSSION

Issue 1 - Are appellants entitled to a refund of the late-filing penalty?

Taxpayers have a personal, non-delegable obligation to file their income tax return by the due date. (*Appeal of Boehme*, 85-SBE-134, Nov. 6, 1985.) California imposes a penalty for the failure to file a return on or before the due date, unless it is shown that the late filing was due to reasonable cause and not due to willful neglect. (§ 19131.) The penalty is computed at 5 percent

⁴ The form was incorrectly dated December 13, 2017; however, it was received by respondent on October 15, 2017.

⁵ The requested refund consists of \$158 for a late-filing penalty, \$68 in “collection costs,” and \$38.15 in interest, for a total of \$264.15.

of the amount of tax required to be shown on the return for every month that the return is late (determined without regard to any extension of time for filing), up to a maximum of 25 percent. (§ 19131(a).) For purposes of calculating this penalty, the amount of tax required to be shown on the return is reduced by any timely tax payments and any credits against the tax which may be claimed on the return. (§ 19131(c).)

Appellants filed their 2015 tax return on October 24, 2016, which was after the automatic extension date for filing of October 17, 2016. Therefore, the delinquent filing penalty is calculated starting from the original due date of the return on April 15, 2016, and the maximum 25 percent was imposed properly. Appellants do not claim that there is reasonable cause to excuse the late filing of their tax return. Instead, appellants claim that if respondent had continued to adhere to the IA and deduct \$30 in September 2017, the penalty would not have been imposed. Appellants are mistaken. The Notice of State Income Tax Due issued on November 14, 2016 shows that the late-filing penalty was imposed before appellants' IA was submitted and approved. The approved IA balance included the late-filing penalty. The penalty had nothing to do with appellants' dishonored payment, or with FTB's failure to deduct \$30 from appellant's bank account in September 2017. Because appellants have not alleged any reasonable cause regarding the late filing of their 2015 tax return, the \$158 penalty was properly assessed.

Issue 2 – Are appellants entitled to a refund of interest?

Tax is due on the original due date of the return without regard to an extension to file. (§ 18567(b).) If the tax is not paid by the original due date, the law provides for the charging of interest on the balance due, compounded daily. (§ 19101.) FTB's imposition of interest is mandatory, and FTB is not allowed to abate interest except where authorized by law. (*Appeal of Yamachi*, 77-SBE-095, June 28, 1977.) Interest is not a penalty; it is compensation for the use of money. (*Appeal of Jaegle*, 76-SBE-070, June 22, 1976.)

For interest to be abated, appellants must qualify under the provisions of sections 21012, 19112, or 19104. Interest abatement under section 21012 is not available here, as appellants have not provided evidence that respondent gave them any written advice. Neither is interest abatement available under section 19112, as appellants have not claimed extreme financial hardship caused by a significant disability or other catastrophic circumstance.

Interest abatement is potentially available under section 19104, if appellants can establish that interest accrued because of an unreasonable error or delay by an officer or employee of respondent in performing a ministerial or managerial act. Here, appellants claim that respondent made an error by not initiating an EFT withdrawal of \$30 from appellants' checking account for September 2017, as agreed in the IA it approved in January 2017. Respondent asserts, however, that it did not initiate that transfer because of appellants' error in making a payment that was later dishonored by their bank. Moreover, respondent asserts it was appellants' error that caused respondent's records to reflect a zero-balance due from appellants. Thus, it was reasonable that respondent did not initiate the September 2017 EFT transfer. Only one month later, on October 12, 2017, appellants followed up and discovered their mistake (that the bank had dishonored their attempted payment). They immediately corrected that error by paying their balance in full that same day, and the IA was never reinstated. Therefore, respondent's failure to withdraw the September 2017 payment pursuant to the IA was not due to its mistake, but rather due to a mistake made by appellants. Accordingly, respondent did not commit an unreasonable error or delay that would support an abatement of interest.

Issue 3 – Are appellants entitled to a refund of installment payment program fees?

Section 19591 requires FTB to impose a fee when taxpayers enter into an IA. (§ 19591(a)(1).) Appellants were notified in January 2017 that a fee of \$34 was imposed, as indicated in the approved IA. (Cal. Code Regs., tit. 18, § 19591(b)(1)(A).)

Appellants requested a refund of "collection cost[s]," which we interpret to mean IA fees. Appellants allege that the fees were only imposed because the September 2017 EFT transfer was not made. Section 19591 requires the imposition of the fee when individuals enter into installment agreements, and appellants were notified, on January 19, 2017, that respondent "will add a \$34 fee to your account balance to establish this installment agreement." The fee was added to appellants' account balance well before September 2017, when the EFT withdrawal was not initiated by FTB. Although appellants filed this appeal using a form entitled "Reasonable Cause – Individual and Fiduciary Claim for Refund," section 19591 does not permit abatement of the IA fee based on reasonable cause. Therefore, we find a \$34 IA fee was properly imposed.

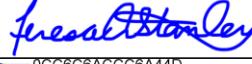
Although appellants were liable for an IA fee, we note that respondent imposed that fee twice. FTB has conceded that the duplicative fee amount should be abated, and we agree.

HOLDING


Respondent properly imposed the late-filing penalty, and appellants have not shown reasonable cause to abate it. Additionally, respondent properly applied interest to outstanding liabilities, and appellants have not shown that they qualify for the abatement of interest. A single \$34 installment payment program fee was properly imposed; however, an additional \$34 fee was improperly added to appellants' account balance, and must be refunded with any associated interest.

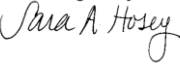
DISPOSITION

Respondent's actions are sustained, with the exception of a refund of \$34, plus any associated interest, to which appellants are entitled.

DocuSigned by:

0CC6C6ACC6A44D...
Teresa A. Stanley
Administrative Law Judge

We concur:

DocuSigned by:

FD75A3136CB34C2...
Kenneth Gast
Administrative Law Judge

DocuSigned by:

6D3FE4A0CA514E7...
Sara A. Hosey
Administrative Law Judge