

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)	OTA Case No. 18042701
MATEUSZ SZESZKOWSKI AND)	
NATALIE SZESZKOWSKI)	Date Issued: February 12, 2019
)	
)	

OPINION

Representing the Parties:

For Appellants: Mateusz and Natalie Szeszkowski

For Respondent: David Muradyan, Tax Counsel III

For Office of Tax Appeals: Andrea Long, Tax Counsel

J. ANGEJA, Administrative Law Judge: Pursuant to Revenue and Taxation Code section 19324,¹ Mateusz Szeszkowski and Natalie Szeszkowski (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$94,958.81² for the 2014 tax year.

Appellants waived their right to an oral hearing and therefore the matter is being decided based on the written record.

ISSUES

1. Whether appellants have established reasonable cause for failing to make a timely payment of tax.
2. Whether appellants have shown that the estimated tax penalty should be waived.

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

² This amount consists of a late payment penalty of \$78,340.15 and an estimated tax penalty of \$16,618.66. In their appeal letter, appellants also contest a dishonored payment penalty of \$13,948.03. At appeal, FTB has agreed to abate the dishonored payment penalty. The imposition of that penalty will therefore not be discussed further.

FACTUAL FINDINGS

1. FTB allows taxpayers to remit personal and business income taxes electronically through its Web Pay website. According to its “Frequently Asked Questions” website (FAQs), “Web Pay is an online application to make electronic payments.”³ The website allows taxpayers to select the current date or a future date up to one year to make an electronic payment. Another FAQ directs taxpayers that they may use a regular checking or savings account to remit an electronic payment, but a request to withdraw from a money market account generally cannot be used. The webpage also states that a confirmation number is issued once taxpayers complete and submit a Web Pay request. It is proof that FTB received the payment request, but does not guarantee funds will be withdrawn from a taxpayer’s account.
2. On April 10, 2015, appellants accessed Web Pay to make an electronic payment of \$600,000 from a money market account at JPMorgan Chase Bank to be remitted on April 14, 2015. However, the financial institution did not honor FTB’s payment request. FTB’s computer printout shows that the payment request was returned under the reason code “R03.” According to FTB, this reason code means that the banking information supplied by appellants (account number and/or routing number) was invalid.
3. On October 15, 2015, appellants timely filed a 2014 California Resident Income Tax Return (Form 540) within the automatic extension period. Appellants reported taxable income of \$7,843,437, total tax of \$1,004,686, and estimated tax payments of \$808,590. Appellants reported a tax due of \$196,096, and self-assessed interest and penalties of \$18,808 for a total balance due of \$214,904. Appellants remitted a payment of \$214,904 with their return.
4. On February 23, 2016, FTB sent a Notice of Tax Return Change (Notice) to appellants, indicating a balance due of \$696,259.53, consisting of estimated tax of \$600,000, a late payment penalty of \$78,340.15, and an estimated tax penalty of \$16,618.66 plus interest. On March 15, 2016, appellants satisfied the outstanding balance of tax, interest, and penalties.

³ <<https://www.ftb.ca.gov/online/webpay/FAQ.shtml>>.

5. On September 12, 2016, FTB received appellants' claim for refund. By a Notice of Action dated September 19, 2017, FTB denied appellants' claim for refund.
6. This timely appeal followed.

DISCUSSION

Issue 1 – Whether appellants have established reasonable cause for failing to make a timely payment of tax.

Section 19001 generally provides that the personal income tax imposed “shall be paid at the time and place fixed for filing the return (determined without regard to any extension of time for filing the return).” Section 19132 provides that a late payment penalty is imposed when taxpayers fail to pay the amount shown as due on the return on or before the due date of the return. The late payment penalty has two parts. The first part is 5 percent of the unpaid tax. (§ 19132(a)(2)(A).) The second part is a penalty of 0.5 percent per month, or portion of a month (not to exceed 40 months), calculated on the outstanding balance. (§ 19132(a)(2)(B).) Here, it is undisputed that appellants failed to timely pay tax in the amount of \$600,000, and therefore the penalty was properly imposed.

The late payment penalty may be abated if the taxpayers can show that the failure to make a timely tax payment was due to reasonable cause and was not due to willful neglect. (§ 19132(a)(1).)

To establish reasonable cause for the late payment of tax, taxpayers must show that their failure to make a timely tax payment of the proper amount occurred despite the exercise of ordinary business care and prudence. (*Appeal of Curry*, 86-SBE-048, Mar. 4, 1986.)⁴ The taxpayers bear the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the 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. (*Appeal of Risser*, 84-SBE-044, Feb. 28, 1984.)

Appellants contend that they remitted a payment of \$600,000 from an account with sufficient funds through FTB's website on April 10, 2015, which was confirmed on April 14,

⁴ Board of Equalization (BOE) opinions are generally available for viewing on the BOE's website: <<http://www.boe.ca.gov/legal/legalopcont.htm#boeopinion>>.

2015. Appellants assert that they were unaware that their payment did not go through until they received the February 23, 2016 Notice.

These events, as presented by appellants, do not show that their failure to make a timely payment occurred despite exercising ordinary business care and prudence. Appellants do not describe what efforts, if any, they took to ensure that the payment was in fact made on April 14, 2015. The Web Pay confirmation page provided by appellants only shows that appellants accessed the website on April 10, 2015, and requested the payment of \$600,000 be withdrawn four days later, on April 14, 2015. The webpage, therefore, cannot be construed as confirming that the \$600,000 was actually withdrawn because appellants requested the payment to occur four days in the future. Rather, as explained on FTB's FAQ website, the confirmation page merely confirmed that FTB received the payment request.

Appellants argue that FTB waited nearly a year before notifying appellants that their April 2015 payment did not go through. Once notified, appellants state that they quickly rectified the situation by submitting a check for the full balance due. However, appellants admit that it was only when they received the Notice approximately 10 months after the tax was due that they discovered that no electronic payment was made to FTB on April 14, 2015. We would expect reasonably prudent taxpayers exercising due care and diligence to monitor their bank account and quickly ascertain whether a scheduled electronic payment from their account to FTB was in fact processed. Had appellants exercised ordinary business care and prudence, they would have noticed that their electronic payment of \$600,000 was never processed. Likewise, lack of notice from the FTB of a failed payment does not negate appellants' duty of prudence and due care to verify that their scheduled payments were successful. Appellants' oversight does not constitute reasonable cause.

Finally, regarding appellants' reference to their history of compliance, we note that the Internal Revenue Service (IRS) administers a program called "First Time Abate" under which the IRS may administratively abate penalties for late payment and late filing if a taxpayer has timely filed returns and paid taxes due for the past three years. Neither the California Legislature nor FTB have adopted a comparable penalty abatement program, so the IRS penalty abatement program and appellants' history of timely filing and paying California taxes cannot be used as a

basis for abatement of the late payment penalty at issue here.⁵ Instead, appellants must establish that their failure to timely pay their taxes was due to reasonable cause and not due to willful neglect, which they have failed to do.

Issue 2 – Whether appellants have shown that the estimated tax penalty should be waived.

Except as otherwise provided, section 19136 conforms to Internal Revenue Code (IRC) section 6654 and imposes a penalty for the underpayment of estimated tax where the taxpayers' installment tax payments are less than the amounts due at the end of the installment periods. For California purposes, installment tax payments are due on April 15, June 15, and January 15 of the following tax year. (§ 19136.1; IRC, § 6654(c)(2).) This penalty is similar to an interest charge, which applies from the installment due date to the earlier of April 15 of the following tax year or the date on which the underpayment is paid. (IRC, § 6654(b)(2).) For California purposes, individuals, such as appellants, who report adjusted gross income equal to or greater than \$1 million are required to make an annual payment of estimated tax equal to 90 percent of the tax shown on the return for the tax year. (§ 19136.3(a); IRC, § 6654(d)(2)(B).)⁶

Appellants do not protest the imposition or computation of the penalty. Instead, appellants argue that the penalty amount should be refunded based on reasonable cause. However, there is no general reasonable cause exception to the estimated tax penalty.⁷ (*Farhoumand v. Commissioner* (2012) T.C. Memo. 2012-131; *Appeal of Weaver Equipment Company*, 80-SBE-048, May 21, 1980.) Accordingly, appellants have failed to establish a basis on which to waive the penalty for underpayment of estimated tax.

⁵The 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.).)

⁶For tax years beginning on or after January 1, 2009, California does not conform to IRC section 6654(d)(1)(B)(ii). (§ 19136.3.)

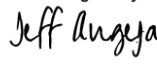
⁷Nevertheless, the estimated tax penalty will not apply under limited circumstances, such as where it is established that either: the failure to timely pay the estimated tax payment was due to reasonable cause *and* the taxpayer retired after reaching age 62; or the taxpayer became disabled in the taxable year for which the estimated payments were required to be made or in the previous year. (IRC, § 6654(e)(3)(B).) Appellants have not alleged disability or that they are over age 62; therefore, we do not discuss this further.

HOLDINGS

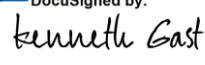
1. Appellants have not established that their failure to make a timely payment of tax for the 2014 tax year was due to reasonable cause.
2. Appellants have not established that the estimated tax penalty should be waived.


DISPOSITION

FTB's action in imposing penalties is modified, as conceded by FTB on appeal, such that the dishonored payment penalty of \$13,948.03 is abated for the 2014 tax year and will be refunded. FTB's action is otherwise sustained.

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Jeffrey G. Angeja
Administrative Law Judge

We concur:

DocuSigned by:

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Kenneth Gast
Administrative Law Judge

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Teresa A. Stanley
Administrative Law Judge