

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
ROBERT ZENS AND
SALLY ANN ZENS

) OTA Case No. 18053242
)
) Date Issued: March 4, 2019
)
)

OPINION

Representing the Parties:

For Appellants: Brent A. Lewis, CPA

For Respondent: Eric Yadao, Tax Counsel III

J. ANGEJA, Administrative Law Judge: Pursuant to Revenue and Taxation Code section 19324,¹ Robert and Sally Ann Zens (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$1,573.30 for the 2016 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 they are entitled to interest abatement.

FACTUAL FINDINGS

1. On December 31, 2016, appellants accessed FTB’s online payment program, Web Pay, to make an electronic payment of \$30,000 for the 2016 tax year. The financial institution did not honor FTB’s payment request because the banking information supplied by appellants (account number and/or routing number) was invalid.

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

2. For tax year 2016, appellants made timely payments of tax as follows: a \$36,563 transfer from their 2015 tax year on April 15, 2016; \$23,000 on April 15, 2016; \$66,000 on June 15, 2016; and \$3,000 on April 15, 2017, for a total amount of timely payments of \$128,563.
3. On April 20, 2017, appellants made an untimely payment of \$28,115, for a total of \$156,678 (\$128,563 + \$28,115) for the 2016 tax year.
4. On October 11, 2017, appellants timely filed a 2016 California Resident Income Tax Return (Form 540) within the automatic extension period. Appellants reported taxable income of \$1,464,024, total tax of \$156,987, estimated tax payments of \$158,563, and withholding credit of \$460, for total credit of \$159,023. Appellants directed to have their reported overpayment of \$2,036, less a self-assessed estimated tax penalty of \$151, be applied as an estimated tax payment for tax year 2017.
5. On February 21, 2018, FTB issued a Notice of Tax Return Change – Revised Balance, indicating that FTB imposed a \$1,538.02 late-payment penalty plus applicable interest, based on appellant’s unpaid tax balance as of April 15, 2017, of \$27,964.²
6. Appellants paid the balance due and filed a timely claim for refund, contending that FTB’s Web Pay system would not allow appellants to log on to make a payment, and when the system later permitted payment, appellants’ banking information was changed and the payment failed.
7. FTB denied appellants’ claim for refund, and 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.

² FTB also advised that its records did not reflect the total payments appellants reported on their return of \$158,563 plus withholding credit of \$460, for a total of \$159,023. FTB advised that its records only reflected estimated payments in the amount of \$156,678 plus the \$460 withholding credit for total payments of \$157,138.

(§ 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 \$27,964, and therefore the penalty was properly imposed. Appellants do not dispute the computation of the penalty, but instead assert that reasonable cause exists to abate it.

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.)³ 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 when they logged on to FTB's Web Pay system to schedule their December 31, 2016, electronic payment, their banking information had been changed, and they were not aware that it was inaccurate. Appellants appear to argue that FTB somehow altered the information. However, a taxpayer's online payment information is created by the taxpayer and secured by the taxpayer's password, and there is no evidence that FTB can or did alter that information.

Moreover, a reasonably prudent taxpayer would verify their banking information prior to confirming the payment. Here, the \$30,000 payment at issue was scheduled to be paid on December 31, 2016, and there is no evidence that appellants promptly checked their account balance to ensure that the payment was made. Appellants did not pay that sum until April 20, 2017, when they contacted FTB to advise of the error and to make a payment. An error in completing the Web Pay process, and failing to check the bank account balance for confirmation, do not demonstrate due diligence and is not sufficient to show reasonable cause. (*Appeal of Friedman*, 2018-OTA-077P, July 20, 2018.)⁴ Accordingly, we conclude that appellants have not

³ Board of Equalization (BOE) opinions are generally available for viewing on the BOE's website: <<http://www.boe.ca.gov/legal/legalopcont.htm#boeopinion>>.

⁴ The Office of Tax Appeals publishes opinions on its website at: <<http://www.ota.ca.gov/opinions>>.

shown that their failure to timely pay the tax occurred despite exercising ordinary business care and prudence.

Issue 2 – Whether appellants have shown that they are entitled to interest abatement.

The assessment of interest on a tax deficiency is mandatory. (§ 19101(a); *Appeal of Yamachi*, 77-SBE-095, June 28, 1977.) Interest is not a penalty but is simply compensation for a taxpayer’s use of money. (*Appeal of Jaegle*, 76-SBE-070, June 22, 1976.) FTB’s determination not to abate interest is presumed correct, and the burden is on the taxpayer to prove error. (*Appeal of Myers*, 2001-SBE-001, May 31, 2001.) Unless there is a statutory exception, our jurisdiction in an interest abatement case is limited by statute to a review of FTB’s determination for an abuse of discretion. (§ 19104(b)(2)(B).) To show an abuse of discretion, a taxpayer must establish that, in refusing to abate interest, FTB exercised its discretion arbitrarily, capriciously, or without sound basis in fact or law. (*Woodral v. Commissioner* (1999) 112 T.C. 19, 23.)

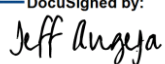
Here, appellants argue that there is reasonable cause to abate interest, but that is not a basis for abatement. We conclude appellants are not entitled to interest abatement.

HOLDINGS


1. Appellants have not established that their failure to make a timely payment of tax for the 2016 tax year was due to reasonable cause.
2. Appellants have not established that they are entitled to interest abatement.

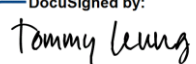
DISPOSITION

FTB's action is sustained in full.

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Jeffrey G. Angeja
Administrative Law Judge

We concur:

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Teresa A. Stanley
Administrative Law Judge

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Tommy Leung
Administrative Law Judge