

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 18063325  
EVAN D. TANA AND KYNA G. FONG ) Date Issued: March 18, 2019  
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\_\_\_\_\_)

**OPINION**

Representing the Parties:

For Appellant: Evan D. Tana and Kyna G. Fong  
For Respondent: Di T. Nguyen, Graduate Legal Assistant

S. HOSEY, Administrative Law Judge: Pursuant to California Revenue and Taxation Code section 19324,<sup>1</sup> Evan D. Tana and Kyna G. Fong (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$1,444.30 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. Have appellants shown reasonable cause to abate the late-payment penalty?
2. Have appellants shown they are entitled to abatement of the estimated tax penalty?

**FACTUAL FINDINGS**

1. Appellants filed their 2016 California tax return using the filing status married filing jointly within the automatic extension period on October 9, 2017. Appellants reported federal adjusted gross income (AGI) of \$461,203. Appellants reported California income tax withheld of \$16,737, excess state disability insurance (SDI) withheld of \$30, total

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<sup>1</sup> Unless otherwise indicated, all statutory references are to sections of the California Revenue and Taxation Code.

payments of \$16,737 and tax due of \$18,705. Appellants remitted payment of \$18,705 with their return.

2. FTB processed appellants' return and imposed a \$1,496.40 late-payment penalty and an estimated tax penalty of \$362.90 plus interest.
3. Appellants argue that they made a good faith effort to make estimated tax payments, and that they attempted to make payments of \$8,000 on April 18, 2016, and \$6,000 on October 18, 2016, but were unaware that the payments were not withdrawn from their bank account until shortly before their 2016 tax return was filed.
4. Appellants paid the balance due and filed a claim for refund. FTB issued a claim denial letter and appellants filed this timely appeal.

### DISCUSSION

#### Issue 1 – Have appellants shown reasonable cause to abate the late-payment penalty?

California imposes a late-payment penalty for a taxpayer's failure to pay the amount of tax shown on a return before the due date, unless it is established that the late-payment was due to reasonable cause and not due to willful neglect. (§ 19132(a)(1).) The late-payment penalty is the sum of two figures that may not exceed 25 percent of the unpaid tax. (§ 19132(a)(2).) The first addend is five percent of the tax that remained unpaid as of the due date.

(§ 19132(a)(2)(A).) The second addend is 0.5 percent of the unpaid tax balance per month for each month, or portion of a month, that the tax remains unpaid after the due date, not to exceed 40 months. (§ 19132(a)(2)(B).) Appellants do not dispute that they paid late. Instead, appellants claim that they are entitled to partial abatement of the penalty because their late payment was due to reasonable cause.

The late-payment penalty will be abated if a taxpayer shows that the failure to make a timely payment of tax was due to reasonable cause and not due to willful neglect. (§ 19132(a).) Reasonable cause requires a showing that the taxpayer acted as an ordinarily intelligent and prudent businessperson would have acted under similar circumstances. (*Appeal of Curry*, 86-SBE-048, Mar. 4, 1986.)<sup>2</sup> The taxpayer bears the burden of proving that reasonable cause existed. (*Appeal of Sleight*, 83-SBE-244, Oct. 26, 1983.)

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<sup>2</sup> Precedential decisions of the 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>>.

Appellants argue that they made a good faith effort to pay, but failed to do so because they had difficulty understanding FTB's electronic payment system (Web Pay). Appellants received confirmation notices that payments had been *requested*, not that the payments had been *made*. However, the requested payments were not made on the scheduled dates.

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.) Furthermore, an error in completing the Web Pay process and failing to check the bank account balance for confirmation, does not demonstrate due diligence and is not sufficient to show reasonable cause. (*Appeal of Friedman*, 2018-OTA-077P, July 20, 2018.)<sup>3</sup> Appellants began the payment process, but never completed it nor confirmed that it was successful. Exercising ordinary business care and prudence would entail ensuring the payments were actually submitted. Appellants' error in not completing the Web Pay process, and not checking their bank account balance to confirm that the requested payments had been made, does not demonstrate due diligence, as would be exercised by an ordinarily intelligent and prudent businessperson.

Based on the foregoing, appellants have not shown reasonable cause to abate the late-payment penalty.

Issue 2 – Have appellants shown they are entitled to abatement of the estimated tax penalty?

California conforms to Internal Revenue Code (IRC) section 6654, and imposes an estimated tax penalty for the failure to timely make estimated income tax payments. (§ 19136(a); IRC, § 6654.) The estimated tax penalty is similar to an interest charge, and applies from the due date of the estimated tax payment until the date it is paid. (IRC, § 6654(b)(2).)

Appellants do not protest the imposition of the penalty. Instead, appellants argue that the penalty amount should be reduced because they made a good effort to pay and because the underpayment was relatively minor and their returns were very complex. These arguments appear to be in the nature of a reasonable cause defense. However, there is no general reasonable cause exception to the estimated tax penalty.<sup>4</sup> (*Estate of Ruben v. Commissioner* (1960) 33 T.C. 1071, 1072; *Farhoumand v. Commissioner* (2012) T.C. Memo. 2012-131; *Appeal*

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<sup>3</sup> Office of Tax Appeals (OTA) opinions may be viewed at: <<https://ota.ca.gov/opinions>>.

<sup>4</sup> IRC section 6654(e)(3) provides some narrow exceptions to the imposition of the penalty in certain circumstances, but there is no evidence or argument that those circumstances are present here.


of *Weaver Equipment Co.*, 80-SBE-048, May 21, 1980.) Accordingly, appellants have failed to establish a basis on which to abate the penalty for underpayment of estimated tax.

HOLDINGS

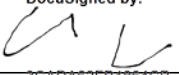
1. Appellants have not demonstrated reasonable cause for failing to timely pay their 2016 tax liability, and the late-payment penalty was correctly assessed.
2. Appellants are not entitled to abatement of the estimated tax penalty.

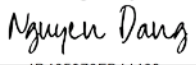
DISPOSITION

FTB's action is sustained.

DocuSigned by:  
  
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Sara A. Hosey  
Administrative Law Judge

We concur:

DocuSigned by:  
  
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Andrew J. Kwee  
Administrative Law Judge

DocuSigned by:  
  
4D465973FB44469...  
Nguyen Dang  
Administrative Law Judge