

2. FTB issued to appellants a refund check in the amount of \$14,207.27 for the 2015 tax year on September 19, 2016.
3. Appellants remitted an estimated tax payment of \$11,030 through FTB's online payment portal, EFT Web Pay, for their 2017 account, effective December 31, 2016.
4. Appellants timely filed a 2016 California Resident Income Tax Return (Form 540). Appellants reported taxable income of \$700,803, total tax of \$62,213, and estimated tax payments of \$36,760. Appellants reported tax due of \$25,453, and self-assessed an estimated tax penalty of \$88 for a total balance due of \$25,541. Appellants remitted a payment of \$25,541 by EFT Web Pay effective April 15, 2017.
5. On June 14, 2017, FTB issued appellants a Notice of Tax Return Change – Revised Balance, which adjusted appellants' reported estimated tax payments of \$36,760 to \$36,234,¹ and proposed a late payment penalty of \$1,558.74, an estimated tax penalty of \$616.59, plus interest of \$179.95.
6. In a letter to FTB dated June 26, 2017, appellants' certified public accountant (CPA) asserted that FTB failed to credit appellants' 2016 account for their payment of \$25,541, which was withdrawn from their bank account on April 18, 2017. Attached to the CPA's letter is a copy of appellants' bank statement, showing that \$25,541 was remitted to FTB on April 18, 2017.²
7. On July 31, 2017, FTB issued appellants a 2016 Income Tax Due Notice, which lists tax of \$62,213, payments of \$36,234, penalties of \$2,435.12, and interest of \$324.98 for a total balance due of \$28,739.10.
8. In a letter received by FTB on August 11, 2017, appellants requested that FTB transfer the estimated tax payment of \$11,030 from their 2017 account to their 2016 account. As requested, FTB subsequently applied the payment of \$11,030 to appellants' 2016 account, with its original effective date of December 31, 2016, which increased the amount of total payments by \$11,030 from \$36,234 to \$47,264.
9. FTB issued appellants a Final Notice Before Levy and Lien on September 15, 2017, for the remaining balance due for 2016 of \$16,830.31, consisting of tax of \$62,213, revised

¹ \$36,234 is the sum of \$10,693, which appellants paid effective April 15, 2016, plus \$25,541, which they paid effective April 15, 2017.

² This payment was recorded as received by FTB on April 15, 2017, and was credited to appellants' account for the 2016 tax year, as noted in the preceding footnote.

penalties of \$1,610.85, interest of \$270.46, and payments of \$47,264. The notice informed appellants that if FTB did not receive payment in full within 30 days from the notice date, FTB may, among other things, impose a collection cost recovery fee. At some point after the issuance of this notice, FTB imposed a collection cost recovery fee of \$287.

10. In a letter dated October 2, 2017, appellants' CPA stated that FTB failed to give them credit for an estimated tax payment of \$14,207 that cleared their bank account on September 19, 2016. Appellants' CPA asserted that, after FTB applied credit for this payment of \$14,207, there would be no outstanding balance remaining.
11. On November 3, 2017, FTB called appellants' CPA and informed him that FTB could not locate appellants' estimated tax payment of \$14,207. Appellants' CPA stated that he would research the matter and get back to FTB. FTB asserts on appeal that appellants' CPA was apparently referring to a refund of \$14,207.27 for the 2015 tax year that FTB issued to appellants on September 19, 2016.
12. On December 11, 2017, FTB issued an Intent to Record a Notice of State Tax Lien, which informed appellants that FTB intended to record a lien against appellants' property if the balance due of \$17,499.19 was not paid in full within 30 days of the notice date.
13. On January 2, 2018, FTB received a payment of \$14,949.45 from appellants, which satisfied the outstanding tax liability in full. However, because there remained a balance of \$2,706.20 for outstanding penalties, fees, and interest on appellants' 2016 account, FTB filed a Notice of State Tax Lien against all of appellants' real property located in Los Angeles County on February 21, 2018, and issued a Tax Lien Notice to appellants on that same date. FTB imposed a lien fee of \$16.
14. On February 26, 2018, FTB received payments of \$2,556.78 and \$149.42, which satisfied the balance due in full. FTB subsequently filed a Release of Lien and imposed a second lien fee of \$16.
15. Appellants subsequently submitted a Reasonable Cause – Individual and Fiduciary Claim for Refund (FTB Form 2917) dated February 28, 2018. They claimed a refund of \$2,706.20 for the 2016 tax year. Appellants contended that they had reasonable cause for the late payment of tax for the following reasons: 1) they were forced to make their 2016 estimated tax payment online and mistakenly entered a different tax year for the payment;

- 2) FTB sent them a refund check for a prior tax year, 2015, and they were confused about the refund check; 3) they submitted to their CPA proof of all payments made for the 2016 tax year, including the estimated tax payment for a different tax year; 4) they did not intend to avoid paying their 2016 tax liability; and 5) appellant-husband is over 75 years old and online payments are “very foreign” to him.
16. In a letter dated May 22, 2018, FTB denied appellants’ claim for refund, because appellants did not demonstrate reasonable cause for the late payment of tax and they did not meet the criteria and exceptions for abating the estimated tax penalty. FTB’s letter failed to address appellants’ claim for refund of the collection cost recovery fee, lien fees, and interest, and erroneously stated that the claim for refund was in the amount of \$1,909.83.³
17. This timely appeal followed.

DISCUSSION

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

R&TC 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).” R&TC section 19132 provides that a late payment penalty is imposed when a taxpayer fails to pay the amount shown as due on the return on or before the due date of the return. The late payment penalty consists of two parts. The first part of the penalty is five percent of the unpaid tax. (R&TC, § 19132(a)(2)(A).) The second part of the penalty is an amount computed at the rate of 0.5 percent per month, or a portion of a month, of the remaining tax not to exceed 40 months. (R&TC, § 19132(a)(2)(B).) The aggregate amount of the late payment penalty may not exceed 25 percent of the total unpaid tax. (R&TC, § 19132(a)(3).)

The late payment penalty may be abated if the taxpayer can show that the failure to make a timely tax payment was due to reasonable cause and was not due to willful neglect. (R&TC, § 19132(a)(1).) To establish reasonable cause for the late payment of tax, the taxpayer must show that his or her failure to make a timely tax payment of the proper amount occurred despite

³ FTB also states that it imposed a mandatory e-pay penalty of \$177.74. Appellants do not dispute this on appeal. This penalty will therefore not be addressed in this decision.

the exercise of ordinary business care and prudence. (*Appeal of Robert T. and M.R. Curry* (86-SBE-048) 1986 WL 22783; *Appeal of Roger W. Sleight* (83-SBE-244) 1983 WL 15615.) The taxpayer bears the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Appeal of Roger W. Sleight, supra.*) 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 J. Ray Risser* (84-SBE-044) 1984 WL 16123.)

Appellants contend that they erroneously entered the wrong year for which to apply the estimated tax of \$11,030 when they remitted the online payment. Appellants assert that appellant-husband is over 75 years old, and making online payments is outside of his comfort zone. Appellants request “in this one time instance” that the penalties be abated.

These events, as presented by appellants, do not show that their failure to make a timely payment occurred despite the exercise of 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 or before April 15, 2017. After FTB transferred appellants’ estimated tax payment of \$11,030 from their 2017 account to their 2016 account, appellants estimated tax payments for 2016 totaled \$47,264 as of April 15, 2017. Appellants were still \$14,949 short of paying their tax liability of \$62,213. Therefore, appellants’ typographical error still resulted in an underpayment of tax on the payment deadline, April 15, 2017, and the 2016 balance due was not paid in full until January 2, 2018. Regarding appellant-husband’s age, FTB points out that he reported on Schedule C of their 2016 federal return that he had a consulting business with a gross income of \$424,050, and therefore, it can be presumed that he was a successful businessman despite his age. Although appellants mistakenly believed that FTB failed to credit their 2016 account for a payment of \$14,207, such a payment would still have not covered the outstanding tax balance of \$14,949. As stated above, FTB issued them a check in the amount of \$14,207.27 on September 19, 2016, which was a refund for their 2015 account.

Additionally, while R&TC section 19011.5 requires taxpayers who make estimated tax payments in excess of \$20,000 to submit their payments electronically, the law also allows taxpayers who meet the requirements of R&TC section 19011.5(b), to make an election to discontinue online payments, or to request and receive a waiver of the online payment

requirement pursuant to R&TC section 19011.5(d).⁴ Appellants neither filed an election under R&TC section 19011.5(b), nor requested a waiver under R&TC section 19011.5(d).

To the extent that appellants are requesting a one-time abatement of the late payment penalty, we note that the Internal Revenue Service (IRS) administers a program called “First Time Abate” under which the IRS may administratively abate late payment and late filing penalties if a taxpayer has timely filed returns and paid taxes due for the past three years. Neither the California Legislature nor FTB has adopted a comparable penalty abatement program. Appellants’ history of timely filing and paying California taxes therefore cannot be used as a basis for abatement of the late payment penalty. (See *Appeal of Tao Xie* (2018-OTA-076P).)

Based on the facts above, we conclude that appellants’ failure to timely pay their 2016 tax liability was not due to reasonable cause.

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

Except as otherwise provided, R&TC section 19136 conforms to Internal Revenue Code (IRC) section 6654 and imposes a penalty for the underpayment of estimated tax where the taxpayer’s 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 15th, June 15th, and January 15th of the following tax year. (R&TC, § 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).)

There is no general reasonable cause exception for the estimated tax penalty. (*Grosshandler v. Commissioner* (1980) 75 T.C. 1, 20-21; *Estate of Sanders v. Commissioner*, T.C. Memo. 2018-104; *Appeal of Weaver Equipment Co.* (80-SBE-048) 1980 WL 4976.)

⁴ FTB Form 4107 may be used for an election or a waiver request; FTB attached a copy of this form to its brief.

Instead, IRC section 6654(e)(3)(A) provides a limited exception to the penalty if, by reason of casualty, disaster, or other unusual circumstances, imposing the penalty would be against equity and good conscience.⁵

Appellants have not provided any evidence of casualty, disaster, or other unusual circumstances affecting their ability to pay estimated tax payments, that would support a finding that the limited exceptions of IRC section 6654(e)(3)(A) apply to this appeal. Accordingly, appellants have not demonstrated that they are entitled to a waiver of the estimated tax penalty.

Issue 3 – Whether appellants are entitled to the abatement of the collection cost recovery fee.

R&TC section 19254(a)(1) requires FTB to impose a collection cost recovery fee if the taxpayer fails to timely pay tax, penalty, or interest after FTB mails a notice to the taxpayer requesting payment, and the notice advises that the continued failure to pay the amount due may result in, among other things, the imposition of a collection cost recovery fee. Once FTB properly imposes the fee, there is no language in the statute that would excuse the fee for any reason, including reasonable cause. (See *Appeal of Michael E. Myers* (2001-SBE-001) 2001 WL 37126924.)

Here, FTB mailed appellants a Final Notice Before Levy & Lien dated September 15, 2017, which stated that if appellants failed to pay the 2016 balance due within 30 days, FTB may impose a collection cost recovery fee. Appellants did not pay the 2016 balance due until February 26, 2018. Accordingly, FTB properly imposed the collection cost recovery fee after proper notice. Appellants are therefore not entitled to an abatement of the collection cost recovery fee.

Issue 4 – Whether appellants are entitled to the abatement of the lien fees.

R&TC section 19221(a) states that when a taxpayer fails to pay a tax liability by the due date, “the amount thereof, (including any interest, additional amount, addition to tax, or penalty, together with any costs that may accrue in addition thereto) shall thereupon be a perfected and enforceable state tax lien.” Government Code section 7174(d) authorizes FTB to collect the various fees associated with recording and releasing a state tax lien. Once FTB properly imposes

⁵ IRC section 6654(e)(3)(B) also provides for the waiver of the penalty if the underpayment was due to reasonable cause, but only for individuals who retired after attaining the age of 62 in the tax year or who became disabled in the tax year. Although appellants satisfy the age requirement, they do not contend and the appeal does not indicate that they are retired or disabled. Neither of these conditions are shown to be present here.

the lien fee, there is no language in R&TC section 19221 that will excuse the fee under any circumstances, including for reasonable cause.

Here, FTB properly imposed the first lien fee when it filed a tax lien on February 21, 2018. FTB imposed the second lien fee when it filed a Release of Lien on or after February 26, 2018. There is no statutory authority for granting appellants relief from the lien fees.

Issue 5 – Whether appellants are entitled to the abatement of interest.

Imposing interest on a tax deficiency is mandatory. (R&TC, § 19101(a).) Interest is also charged for a late payment penalty, a failure to file penalty, and an accuracy-related penalty. (R&TC, § 19101(c)(2)(B).) Interest is not a penalty but is compensation for the taxpayer’s use of money after it should have been paid to the state. (*Appeal of Amy M. Yamachi* (77-SBE-095) 1977 WL 3905.) There is no reasonable cause exception to the imposition of interest. (*Appeal of Audrey C. Jaegle* (76-SBE-070) 1976 WL 4086.) An abatement of interest should be ordered only “where failure to abate interest would be widely perceived as grossly unfair.” (*Lee v. Commissioner* (1999) 113 T.C. 145, 149.)

To obtain interest abatement, appellants must qualify under one of the following three statutes: R&TC section 19104, 19112, or 21012, although only R&TC section 19104 expressly provides OTA’s predecessor and now OTA with statutory authority to abate interest. However, R&TC section 19104 does not apply here because appellants do not allege, and the evidence does not show, that the interest at issue is attributable in whole or in part to any unreasonable error or delay by an officer or employee of FTB when performing a ministerial or managerial act.

Unlike R&TC section 19104, sections 19112 and 21012 do not authorize OTA to abate interest for any purpose, leaving the question of whether interest abatement is justified in the sole discretion of FTB. Thus, in the absence of legislative authority, OTA does not have jurisdiction to determine whether FTB’s failure to abate interest rises to the level of an abuse of that discretion. (*Appeal of Jeffrey C. and Nancy B. Moy* (2019-OTA-057P).)

HOLDINGS

1. Appellants have not established that their failure to make a timely payment of tax was due to reasonable cause and not willful neglect.
2. Appellants have not established that the estimated tax penalty should be waived.
3. Appellants are not entitled to the abatement of the collection cost recovery fee.
4. Appellants are not entitled to the abatement of the lien fees.
5. Appellants are not entitled to the abatement of interest.

DISPOSITION

FTB's action in denying appellants' claim for refund is sustained.

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Neil Robinson
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Neil Robinson
Administrative Law Judge

We concur:

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John O Johnson
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John O. Johnson
Administrative Law Judge

DocuSigned by:
Nguyen Dang
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Nguyen Dang
Administrative Law Judge