

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

In the Matter of the Appeal of:	)	OTA Case No. 18073452
<b>TREVOR FETTER AND</b>	)	Date Issued: December 5, 2019
<b>MELISSA FETTER</b>	)	
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**OPINION**

Representing the Parties:

For Appellant: David L. Veeder

For Respondent: Jean M. Cramer, Tax Counsel IV

S. HOSEY, Administrative Law Judge: Pursuant to California Revenue and Taxation Code (R&TC) section 19324, Trevor Fetter and Melissa Fetter (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$5,104.58 for the 2016 tax year.<sup>1</sup>

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 of tax penalty imposed under R&TC section 19132?
2. Have appellants established that the underpayment of estimated tax penalty imposed under R&TC section 19136 should be abated?

**FACTUAL FINDINGS**

1. Appellants filed their 2016 California tax return on October 11, 2017, reporting a total tax liability of \$118,515.

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<sup>1</sup> This amount includes a late payment penalty of \$4,049.17 and an underpayment of estimated tax penalty of \$1,055.41.

2. Appellants reduced this liability by a \$695 withholding credit and \$98,349 in estimated tax payments, leaving a balance due of \$19,471. Appellants also self-reported a \$249 underpayment of estimated tax penalty.
3. On October 13, 2017, appellants made two web payments of \$20,188 each for a total payment of \$40,376.
4. FTB processed appellants' return and determined that rather than \$98,349 in estimated tax payments reported on appellants' return, it had only received estimated tax payments in the amount of \$67,648. This included the transfer of appellants' 2015 overpayment on April 15, 2016 in the amount of \$20,648, an estimated tax payment on June 10, 2016 in the amount of \$25,000, and the extension payment of April 15, 2017 in the amount of \$22,000.
5. FTB issued a Notice of Tax Return Change – Revised Balance on November 6, 2017, and explained that it had made changes to appellants' 2016 tax return that resulted in a balance due of \$57,365.38, which included \$50,867 in unpaid tax, a \$4,264.62 late payment penalty, and a \$1,071.95 underpayment of estimated tax penalty, plus interest.
6. FTB agreed that the notice failed to take into account appellants' \$695 withholding payment and two payments that totaled \$40,376. Therefore, FTB issued a revised balance due notice, showing a remaining tax due of \$9,796, a late payment penalty of \$4,049.17, and an underpayment of estimated tax penalty of \$1,055.41 plus interest.
7. Appellants paid their 2016 liability in full by March 21, 2018.
8. Appellants filed a claim for refund on April 18, 2018, for the late payment and underpayment of estimated tax penalties for the 2016 tax year, stating that they had no idea there had been an error in the estimated tax payments for their 2015 tax year that reduced the 2015 overpayment transferred to the 2016 tax year. Appellants argue that they did not receive any notices for the 2015 tax year. FTB denied appellants' claim for refund and appellants filed this timely appeal.

### DISCUSSION

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

R&TC section 19132 imposes a late payment penalty when a taxpayer fails to pay the amount shown as due on the return by the date prescribed for the payment of the tax. Generally,

the date prescribed for the payment of the tax is the due date of the return (determined without regard to extensions of time for filing). (R&TC, § 19001.) Here, FTB properly proposed the late payment penalty because the payment due date was April 15, 2017, and appellants did not completely satisfy the 2016 liability until March 21, 2018, approximately eleven months after the due date.

The late payment penalty may be abated if the taxpayer shows that the failure to make a timely payment of tax was due to reasonable cause and not due to willful neglect. (R&TC, § 19132(a)(1).) To establish reasonable cause for the late payment of tax, a taxpayer must show that the failure to make a timely payment of the proper amount of tax occurred despite the exercise of ordinary business care and prudence. (*Appeal of Curry* (86-SBE-048) 1986 WL 22783.) The taxpayer bears the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Appeal of Scott* (83-SBE-094) 1983 WL 15480.) An asserted lack of documentation of difficulty in calculating a tax liability does not, by itself, constitute reasonable cause for a late payment of tax. (*Appeal of Sleight* (83-SBE-244) 1983 WL 15615.)

Appellants claim that they were unaware there had been an error in the estimated tax payments for their 2015 tax year that reduced the 2015 overpayment transferred to their 2016 tax year. They argue that they did not receive any of FTB's notices concerning the adjustments to the 2015 tax year. However, there is no corroborating evidence that the notices were not properly provided.

The law provides that it is not necessary for FTB to prove that the notice was received by the taxpayer. (See *United States v. Zolla* (9th Cir. 1984) 724 F.2d 808, 810.) It is sufficient that the notice was mailed to the taxpayer's last-known address and that it was not returned to FTB as undelivered. (*Ibid.*) As a general rule, a taxpayer's last-known address is the address that appears on the taxpayer's most recently filed tax return, unless FTB is given clear and concise notice of a different address. (*Appeal of Bryant* (83-SBE-180) 1983 WL 961596.) Here, FTB properly mailed the notices to appellant's last-known address shown on appellants' 2015 tax return.<sup>2</sup> There is no indication that a notice sent to appellant was returned to FTB as undelivered, and appellant has provided no evidence indicating that FTB failed to send appellant notices to its

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<sup>2</sup> Notices may be given by first-class mail and are sufficient if mailed to the taxpayer's last known address. (R&TC, § 18416.)

last-known address. Therefore, appellant has failed to establish reasonable cause for abatement of the late payment penalty.

Issue 2 – Have appellants established that the underpayment of estimated tax penalty should be abated?

R&TC section 19136 conforms to Internal Revenue Code (IRC) section 6654, and imposes an estimated tax penalty for failure to timely make estimated tax payments. The estimated tax penalty is similar to an interest charge in that it is calculated applying the applicable interest rate to the underpayment of estimated tax. (*Appeal of Saltzman* (2019-OTA-070P).) There is no provision in the R&TC or IRC that allows the estimated tax penalty to be abated based solely on a finding of reasonable cause. (*Ibid.*) As a result, there is no general reasonable cause exception to imposition of the estimated tax penalty. (*Appeal of Johnson* (2018-OTA-119P).) The estimated tax penalty is mandatory unless the taxpayer establishes that a statutory exception applies. (*Ibid.*) IRC section 6654(e)(3)(A) provides that the taxing agency may waive the estimated tax penalty if it determines that by reason of casualty, disaster, or other unusual circumstances that the imposition of the estimated tax penalty would be against equity and good conscience.


Here, the imposition of the estimated tax penalty was proper because appellants' total tax liability was \$118,515, with only a \$695 withholding credit and \$67,648 in estimated tax payments for the 2016 tax year. Therefore, they had an underpayment of estimated tax based on the \$50,172 in unpaid taxes due on April 15, 2017. Appellants have not shown "casualty, disaster, or other unusual circumstances" pursuant to IRC section 6654(e)(3)(A) or (B) to warrant abatement of the underpayment of estimated tax penalty.

HOLDINGS

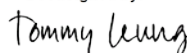
1. Appellants have failed to show reasonable cause to abate the late payment of tax penalty imposed under R&TC section 19132.
2. Appellants are not entitled to abatement of the estimated tax penalty imposed under R&TC section 19136.

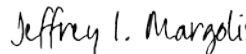
DISPOSITION

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

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 Sara A. Hosey  
 Administrative Law Judge

We concur:

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 Tommy Leung  
 Administrative Law Judge

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 Jeffrey I. Margolis  
 Administrative Law Judge