

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

In the Matter of the Appeal of:	)	OTA Case No. 19064930
<b>REX G. MAUGHAN AND RUTH G.</b>	)	
<b>MAUGHAN</b>	)	Date Issued: December 18, 2019
	)	
	)	

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**OPINION**

Representing the Parties:

For Appellants: Rhonda R. Krause, CPA

For Respondent: Shanon Pavao, Tax Counsel III

N. DANG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Rex G. Maughan and Ruth G. Maughan (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying their claim for refund for the 2017 tax year.

Appellants waived their right to an oral hearing, and therefore, we decide the matter based on the written record.

**ISSUES**<sup>1</sup>

1. Whether appellants have established that abatement of the late-payment penalty is warranted due to reasonable cause.
2. Whether appellants have established that interest should be abated.

**FACTUAL FINDINGS**

1. On October 15, 2018, appellants filed a joint 2017 California Nonresident or Part-Year Resident Income Tax Return, reporting California adjusted gross income of \$61,037,700, \$0 regular tax due, and alternative minimum tax (AMT) due of \$19,069.
2. Appellants paid their tax liability six months after the April 15, 2018 deadline.

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<sup>1</sup> Appellants also contend that penalty and interest abatement is warranted due to their long history of timely filings and payments. While commendable, appellants’ good compliance history is not a basis for abatement. Accordingly, we do not discuss this contention further.

3. Consequently, FTB imposed a late-payment penalty and interest.
4. Appellants paid the aforementioned penalty and interest, and filed a refund claim asserting that abatement of these items is warranted due to reasonable cause.

### DISCUSSION

Issue 1 – Whether appellants have established that abatement of the late-payment penalty is warranted due to reasonable cause.

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. However, 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 was 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.)

Appellants argue that penalty abatement is warranted because they lacked “information” necessary to properly determine their 2017 tax liability. Appellants explain that without this information, they were unable to determine whether appellant would be required to pay the AMT, and that no regular tax was due because appellants had an offsetting net operating loss (NOL) deduction.

Appellants’ asserted lack of documentation or difficulty in calculating a tax liability does not, by itself, constitute reasonable cause. (*Appeal of Sleight* (83- SBE-244) 1983 WL 15615.) The standard of ordinary business care and prudence requires taxpayers to make a timely payment based upon a reasonable estimate of their tax liability. (See *ibid.*) Where the taxpayer asserts that a late payment was due to of a lack of information, the taxpayer must *substantiate* that the taxpayer made efforts to acquire that information, and that difficulty in obtaining that information directly caused the delay in payment. (*Appeal of Moren* (2019-OTA-176P).)<sup>2</sup>

Appellants have not provided any explanation or evidence indicating what information they allegedly required, what steps were taken to obtain that information, or how, specifically,

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<sup>2</sup> Precedential decisions of the Office of Tax Appeals (OTA) may be found on OTA’s website at: <<https://ota.ca.gov/opinions>>.

the failure to obtain this information prevented them from making a reasonable estimate of their tax liability. Moreover, it appears that had appellants exercised due care in familiarizing themselves with the applicable provisions pertaining to the calculation of the AMT (i.e., Internal Revenue Code section 56), they would have realized, without the need for any further information, that attempting to completely offset over \$60 million of income with a NOL deduction would require appellants to pay the AMT.<sup>3</sup> Taxpayers do not exercise ordinary business care and prudence when they fail to acquaint themselves with the requirements of California's tax law. (*Appeal of Diebold, Inc.* (83-SBE-002) 1983 WL 15389.) Therefore, appellants have not shown reasonable cause for their late payment.

Issue 2 – Whether appellants have established that interest should be abated.

R&TC section 19101 provides that interest shall be assessed upon any portion of the tax not paid on or before the date prescribed for payment. The imposition of interest is mandatory. (*Ibid.*; see also *Appeal of Yamachi* (77-SBE-095) 1977 WL 3905.) Interest is not a penalty, but rather, it is compensation for the use of money from the time it was required to be paid to the state, to the actual date of payment. (*Appeal of Jaegle* (76-SBE-070) 1976 WL 4086.)

Appellants make a reasonable cause argument, identical to the one described above in Issue 1, for why interest should be abated. However, we reject this contention above, and regardless, there is no reasonable cause exception to the imposition of interest. (*Appeal of Shubert* (79-SBE-161) 1979 WL 4202.)

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<sup>3</sup> California conforms to former Internal Revenue Code section 56(d)(1)(A)(i)(II), as amended (Pub.L. 113-295 (Dec. 19, 2014), eff. through December 21, 2017), which states that the alternative tax NOL deduction is limited to 90 percent of AMT income. (R&TC, § 23400.)

HOLDINGS

1. Appellants have not established that abatement of the late-payment penalty is warranted due to reasonable cause.
2. Appellants have not established that interest should be abated.

DISPOSITION

FTB's action is sustained.

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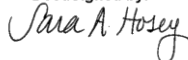


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Nguyen Dang  
Administrative Law Judge

We concur:

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Sara A. Hosey  
Administrative Law Judge

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Josh Lambert  
Administrative Law Judge