

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

In the Matter of the Appeal of:

**LINDA S. WARWICK**) OTA Case No. 19054808  
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)**OPINION**

Representing the Parties:

For Appellant:

Linda S. Warwick

For Respondent:

Eric R. Brown, Tax Counsel III

R. TAY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Linda S. Warwick (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant's claim for refund of \$7,954.61 for the 2015 tax year.<sup>1</sup>

Appellant waived her right to an oral hearing; therefore, the matter is being decided based on the written record.

**ISSUES**

1. Whether appellant has shown reasonable cause to abate the late payment penalty.
2. Whether appellant is entitled to interest abatement.
3. Whether appellant has shown that the installment agreement fee should be abated.

**FACTUAL FINDINGS**

1. Appellant was a California resident in 2015 and filed a timely 2015 California income tax return. Appellant did not remit any tax payment when she filed her 2015 income tax return and did not make any tax payments prior to filing her return.
2. FTB issued a Notice of Tax Return Change on October 17, 2016, which showed a total

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<sup>1</sup> Appellant requested a refund of the "penalties, interest and fees" in the amount of \$9,514.52. However, the record shows that FTB assessed \$5,425.69 for the late payment penalty, \$2,494.92 for interest, and \$34 for the installment agreement fee. Thus, the total amount in dispute is \$7,954.61.

due of \$36,976.25, consisting of a tax liability of \$33,606, a late payment penalty of \$2,856.51, and interest of \$513.74.

3. On November 20, 2016, appellant remitted a \$500 payment, and entered into an installment agreement with FTB for the rest of her balance due.
4. Appellant made her final payment on January 3, 2019.
5. In a letter dated January 15, 2019, appellant requested a refund of the late payment penalty, interest and fees. Appellant submitted a second claim for refund on April 2, 2019.
6. FTB denied the claim for refund on April 22, 2019. This timely appeal follows.

### DISCUSSION

#### Issue 1 - Whether appellant has shown reasonable cause to abate the late payment penalty.

Generally, pursuant to R&TC section 19001, the date prescribed for the payment of the tax is the due date of the return without regard to extension of time for filing the return. A taxpayer may extend the time for filing a return, but an extension of time to file a return does not extend the time for the required payment of tax, which is generally due on or before the due date of the return without regard to an extension. (R&TC, § 18604(b).) For the 2015 tax year at issue, appellant's tax payment was due on April 15, 2016.<sup>2</sup>

FTB assesses a late payment penalty if a taxpayer fails to timely pay the amount shown on the return by the payment due date. (R&TC, § 19132.) The late payment penalty is calculated as 5 percent of the total tax unpaid, plus one-half of one percent for every month the payment of tax is late, not to exceed 40 months.<sup>3</sup> (R&TC, § 19132(a)(2).) Here, it is undisputed that appellant did not remit payment with her return, but rather made her first tax payment for 2015 on November 20, 2016. Thus, FTB's imposition of the late payment penalty is proper.

The late payment penalty may be abated, however, 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. (R&TC, § 19132(a)(1).) To establish reasonable cause for a late payment of tax, a taxpayer must show that the failure to make a timely payment occurred despite the exercise of ordinary

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<sup>2</sup> If appellant made a tax payment on or before April 18, 2016, it would have been deemed timely because the filing due date of April 15th was extended due to a holiday and the weekend.

<sup>3</sup> Appellant does not dispute the calculation of the penalty, and we find no evidence of error here.

business care and prudence. (*Appeal of Scanlon* (2018-OTA-075P); *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 Moren* (2019-OTA-176P).)

Here, appellant claims she had reasonable cause to excuse the late payment of her 2015 tax because she had difficulty obtaining a loan to pay her taxes. Appellant is presumably arguing that her inability to obtain a loan by the payment due date constitutes reasonable cause. She also claims, in a letter dated January 15, 2019 provided with her opening brief, that she had other life difficulties, but does not specifically allege that those prevented her from making a timely tax payment.

Financial hardship may constitute reasonable cause to excuse the late payment of tax. Reasonable cause based on financial hardship is explained in federal Treasury Regulation section 301.6651-1(c)(1), which provides that the taxpayer must show the exercise of ordinary business care and prudence and was either unable to pay the tax or would suffer an undue hardship by paying by the due date.<sup>4</sup> Treasury Regulation section 301.6651-1(c)(1) further provides that all the facts and circumstances, including the amount and nature of the taxpayer's expenditures in light of the income (or other amounts) the taxpayer could, at the time of such expenditures, reasonably expect to receive prior to the date prescribed for the payment of the tax will be considered. Thus, taxpayers can prove ordinary business care and prudence by showing reasonable efforts to conserve sufficient assets in marketable form to satisfy the tax liability. Additionally, "undue hardship" is defined in Treasury Regulation section 1.6161-1(b) as not merely a "general hardship," but rather "more than an inconvenience to the taxpayer."

Although appellant claims to have suffered financial difficulty, she has not provided any evidence to substantiate those claims or to show that her financial difficulties constitute reasonable cause under the law. There is no evidence of her attempts to obtain a loan and no evidence of the financial impact of her other alleged hardships. Absent such evidence, appellant has not shown reasonable cause. In addition, she has not shown that she exercised ordinary business care and prudence or that she would have suffered undue hardship by making a timely

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<sup>4</sup> R&TC section 19132 is patterned after Internal Revenue Code section 6651. Consequently, the interpretation and effect given the federal provision by the federal courts and administrative bodies is relevant in applying the California statute. (*Andrews v. Franchise Tax Bd.* (1969) 275 Cal.App.2d 653,658; *Rihn v. Franchise Tax Bd.* (1955) 131 Cal.App.2d 356, 360.)

tax payment. As such, we cannot abate the late payment penalty based on appellant's financial hardship.

Issue 2 - Whether appellant is entitled to interest abatement.

If any amount of tax is not paid by the due date, interest is required to be imposed from the due date until the date the taxes are paid. (R&TC, § 19101(a).) Imposition of interest is mandatory, and it can only be abated in certain limited situations when authorized by law. (*Appeal of Yamachi* (77-SBE-095) 1977 WL 3905.) Interest is not a penalty imposed on a taxpayer; it is merely compensation for the use of money, and there is no reasonable cause exception to imposition of interest. (*Appeal of Jaegle* (76-SBE-070) 1976 WL 4086; *Appeal of Goodwin* (97-SBE-003) 1997 WL 258474.)

Appellant requests that we grant abatement of interest on the same grounds as her request for abatement of the late payment penalty. However, to obtain relief from interest, a taxpayer must qualify under the waiver provisions of either R&TC sections 21012, 19104, or 19112. (*Appeal of Balch* (2018-OTA-159P).) The relief of interest under R&TC section 21012 is not relevant here, because FTB did not provide appellants with any written advice. Under R&TC section 19104, FTB is authorized to abate or refund interest if there has been an unreasonable error or delay in the performance of a ministerial or managerial act by an employee of FTB. Appellant has not alleged any such error or delay. Lastly, the Office of Tax Appeals does not have jurisdiction to review FTB's denial of a waiver of interest under R&TC section 19112, which requires a showing of extreme financial hardship. (*Appeal of Moy* (2019-OTA-057P).) Appellant makes no other argument to support her request for interest abatement, and we find no basis to grant it.

Issue 3 - Whether appellant has shown that the installment agreement fee should be abated.


R&TC section 19591(a)(1) states that a tax service fee "shall be imposed upon . . . [i]ninstallment payment programs." Once imposed, there is no provision in California law to abate or waive an installment agreement fee. Here, it is undisputed that appellant agreed to enter into an installment agreement with FTB. Consequently, FTB properly imposed the installment agreement fee, which cannot be abated under the law.

HOLDINGS

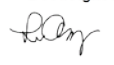
1. Appellant has not shown she had reasonable cause to abate the late payment penalty.
2. Appellant is not entitled to interest abatement.
3. The installment agreement fee cannot be abated under the law.

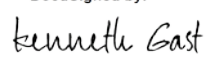
DISPOSITION

FTB's action is sustained.

DocuSigned by:  
  
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Richard Tay  
Administrative Law Judge

We concur:

DocuSigned by:  
  
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Linda C. Cheng  
Administrative Law Judge

DocuSigned by:  
  
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Kenneth Gast  
Administrative Law Judge

Date Issued: 1/13/2020