

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18093774
 M. ABADESCO)
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OPINION

Representing the Parties:

For Appellant: Mounia Boukhalfa,
Tax Appeals Assistance Program¹

For Respondent: Gi Nam, Tax Counsel

E. S. EWING, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. Abadesco (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant's claim for refund of \$1,892.54 for the 2017 tax year.

Office of Tax Appeals (OTA) Administrative Law Judges Elliott Scott Ewing, John O. Johnson, and Suzanne B. Brown held a telephonic oral hearing for this matter in Sacramento, California, on April 29, 2020. At the conclusion of the hearing, the record was closed and this matter was submitted for decision.

ISSUES

1. Whether appellant has established the late payment penalty should be abated based on a showing of reasonable cause for the late payment of tax.
2. Whether appellant is entitled to interest abatement.

FACTUAL FINDINGS

1. Appellant temporarily moved to Florida in late 2017, due in part to the Sonoma wildfires, and returned to California in April 2018.

¹ Appellant filed her opening brief. Nick Wagener of TAAP filed appellant's reply brief.

2. On April 15, 2018, appellant timely filed a California Resident Income Tax Return for the 2017 tax year using tax preparation software, reporting tax of \$28,528, prior payments of \$250, and a total amount due of \$28,278. However, appellant did not make any payment with the filing of the return.
3. Because appellant failed to timely pay the taxes in full by the April 15, 2018 due date, on June 14, 2018, FTB issued appellant a Notice of State Income Tax Due imposing a \$1,696.68 late payment penalty and \$195.86 in interest.
4. Also on June 14, 2018, appellant made a payment which fully satisfied the Notice of State Income Tax Due.
5. On June 29, 2018, appellant filed a claim for refund of the penalty and interest. FTB denied the claim in full.
6. This timely appeal followed.

DISCUSSION

Issue 1: Whether appellant has established the late payment penalty should be abated based on a showing of reasonable cause for the late payment of tax.

R&TC section 19132 provides that a late payment penalty shall be imposed when a taxpayer fails to pay the amount shown as due on the return on or before the due date of the return. Here, it is undisputed that appellant failed to timely pay the tax due and therefore the penalty was properly imposed.²

The late payment penalty may 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. (R&TC, § 19132(a).) To establish reasonable cause for a late payment of tax, a taxpayer must show that his or her 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; *Appeal of Sleight* (83-SBE-244) 1983 WL 15615.) 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 Friedman*, 2018-OTA-077P.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Magidow* (82-SBE-274) 1982 WL 11930.)

²The calculation of the amount of the penalty is not an issue in this appeal.

As discussed above, after the April 15, 2018 due date for payment had passed, on June 14, 2018, FTB sent appellant a notice of tax due and appellant immediately paid the full amount due. Appellant does not dispute that the payment was two months late and that the penalty was properly imposed. However, appellant asserts we should abate the late payment penalty due to reasonable cause.

In the briefing and at oral hearing, appellant explained that she was displaced by the Sonoma County wildfires that occurred in October 2017, and temporarily moved to Florida. Appellant further explained that she used tax software to file her taxes and asserts that she attempted to make an online payment using the software to do so. However, the payment did not process and FTB did not receive payment.

Appellant testified that she did not check her bank account as frequently as she might otherwise have because she was under the impression the payment had processed and she was also dealing with significant difficulties following the fires and her temporary relocation to Florida. Appellant asserts that when she did check her bank account and did not see the funds withdrawn, she assumed that tax payments can take some time to come out of the bank account. Finally, appellant stated the payment may not have processed because she was using a credit union rather than a traditional bank.

While we are sympathetic to appellant's situation at the time, we find that appellant did not take the appropriate steps to ensure that the tax was timely paid by the April 15, 2018 due date. A reasonably prudent taxpayer exercising ordinary business care and prudence would have checked to see that the necessary information had been entered into the tax software program in order to properly remit payment of the taxes. Further, we would expect a taxpayer in appellant's circumstances to monitor the bank account and ascertain whether a scheduled electronic payment from the account to FTB was in fact paid in a timely manner, even though the taxpayer experienced a relocation during the tax season. (*Appeal of Curry, supra; Appeal of Sleight, supra.*)

Finally, although appellant explained that she thought the actual withdrawal of funds could take a period of time, we find that a reasonably prudent taxpayer exercising ordinary business care and prudence would not have expected it to take two months (i.e., the time between April 15, 2018, when the payment was due, and June 14, 2018, when she received FTB's notice alerting her of the failure to make the payment) for the funds to be withdrawn from the bank

account. Accordingly, appellant has not shown reasonable cause to abate the late payment penalty.

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, as it is merely compensation for the use of money, and there is no reasonable cause exception to the imposition of interest. (*Appeal of Jaegle* (76-SBE-070) 1976 WL 4086; *Appeal of Goodwin* (97-SBE-003) 1997 WL 258474.) OTA has jurisdiction to determine whether FTB's failure to abate interest under R&TC section 19104 was an abuse of discretion; if so, we may order an abatement of interest. (R&TC, § 19104(b)(2)(B).)


Appellant requests that we grant interest abatement because the late payment penalty, upon which the interest accrued, should be abated for reasonable cause. However, we have determined herein that the late payment penalty is not abated. Appellant has not alleged any other grounds to justify relief of interest, and we find none in the record before us.

HOLDINGS

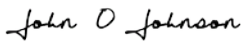
1. Appellant has not established the late payment penalty should be abated based on a showing of reasonable cause for the late payment of tax.
2. Appellant is not entitled to interest abatement.


DISPOSITION

FTB’s action is sustained.

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 Elliott Scott Ewing
 Administrative Law Judge

We concur:

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 John O. Johnson
 Administrative Law Judge

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 Suzanne B. Brown
 Administrative Law Judge

Date Issued: 8/5/2020