

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

In the Matter of the Appeal of: ) OTA Case No. 20056212  
 )  
**M. HWANG** )  
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**OPINION**

Representing the Parties:

For Appellant: M. Hwang

For Respondent: Phillip C. Kleam, Tax Counsel III

**N. DANG**, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. Hwang (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$1,318.52 for the 2018 tax year.

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

**ISSUE**

Whether appellant’s April 13, 2019 check constitutes a valid, and therefore, timely payment, and if not, whether the late-payment (R&TC, § 19132) penalty and interest should be abated due to reasonable cause.

**FACTUAL FINDINGS**

1. On April 13, 2019, appellant made an extension payment via check to satisfy her 2018 tax liability. There were two conflicting payment amounts written on the check: “\$12000” and “ten thousand two thousand dollars.”
2. On June 3, 2019, FTB issued a returned remittance letter to appellant notifying her of the conflicting amounts and requiring appellant to send a corrected check within 15 days.
3. Appellant failed to respond by the deadline set forth in this letter.
4. Consequently, FTB imposed a late-payment penalty and interest.

5. Thereafter, appellant paid the amount due and filed a refund claim disputing the penalty and interest.

### DISCUSSION

Appellant seeks relief from the penalty and interest based upon two separate grounds. Appellant first argues that she made a timely payment. Despite the conflicting payment amounts, appellant asserts FTB should have accepted her April 13, 2019 check because the numerically expressed amount was clear and unambiguous. Alternatively, appellant contends she had “reasonable cause” for failing to timely respond to FTB’s June 3, 2019 letter. Appellant explains that she is a physician, and at that time, she was working extensively and out of the country caring for her ailing father from May 28, 2019, to June 2, 2019. We address each of appellant’s arguments in turn.

To begin, there is no requirement that FTB accept a check with conflicting payment amounts, nor would it make sense for FTB to do so under these circumstances. It is expected that for a check to be honored, the processing entity must be able to ascertain the correct payment amount. In the event of conflicting information, the law pertaining to negotiable instruments (i.e., checks) sets forth a clear hierarchy detailing which terms govern. “If an instrument contains contradictory terms, typewritten terms prevail over printed terms, handwritten terms prevail over both, and *words prevail over numbers*.” (Cal. Comm. Code, § 3114, italics added.) This would require appellant’s check to be processed for “ten thousand two thousand dollars,” which is clearly impracticable. Hence, this check does not constitute a valid form of payment, and therefore, appellant did not timely pay her 2018 taxes.

Next, we address appellant’s contentions concerning her failure to timely respond to FTB’s letter. As applied to the interest at issue, these are wholly unavailing. The imposition of interest is mandatory and there is simply no provision for abating it due to reasonable cause. (*Appeal of Moy*, 2019-OTA-057P.)

However, the late-payment penalty will not apply if the taxpayer establishes 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).) The taxpayer bears the burden of proving reasonable cause. (*Appeal of Friedman*, 2018-OTA-077P.) The taxpayer must show that the failure to timely pay the amount due occurred despite exercising ordinary business care and prudence. (*Ibid.*) In other words, the reason for not timely paying the tax due must be such that an ordinarily

intelligent and prudent businessperson would have acted similarly under the circumstances.  
(*Ibid.*)

We have consistently held that a busy work schedule does not constitute reasonable cause to abate the late-payment penalty. (See, e.g., *Appeal of Triple Crown Baseball, LLC*, 2019-OTA-025P [holding that where difficulties “cause the taxpayer to sacrifice the timeliness of one aspect of the taxpayer’s affairs to pursue other aspects, the taxpayer must bear the consequences of that choice”].)

Taxpayers must also show that the duration of an incapacity which prevented the making of a timely payment approximates that of the failure to pay. (*Appeal of Triple Crown Baseball, LLC, supra.*) This is plainly not the case here. We fail to see how appellant’s trip, which occurred prior to the issuance of FTB’s letter, prevented her from timely responding.

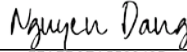
Accordingly, we conclude that neither penalty nor interest abatement is warranted.

HOLDING


Appellant’s April 13, 2019 check does not constitute a valid payment and there is no reasonable cause to abate either the penalty or interest.


DISPOSITION

We sustain FTB’s action.

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Nguyen Dang  
Administrative Law Judge

We concur:

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Kenneth Gast  
Administrative Law Judge

DocuSigned by:  
  
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Michael F. Geary  
Administrative Law Judge

Date Issued: 12/14/2020