

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:

J. LORENZINI AND
A. LORENZINI

) OTA Case No. 20015749
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OPINION

Representing the Parties:

For Appellants:

J. Lorenzini
A. Lorenzini
Phil C. Quitoriano

For Respondent:

Gi Nam, Tax Counsel

N. DANG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. Lorenzini and A. Lorenzini (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying their claim for refund of \$2,442.72 for the 2018 tax year.

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

ISSUE

Whether the late-payment penalty and interest should be abated.

FACTUAL FINDINGS

1. Appellants obtained the services of a tax return preparer to prepare and file their joint California income tax return for the 2018 tax year.
2. On April 13, 2019, appellants’ tax return preparer informed appellants in writing that their California income tax return would be e-filed and the balance due as shown on this return would be electronically paid from their bank account on April 15, 2019 (the payment due date).
3. For inexplicable reasons, no electronic payment was made on the payment due date.
4. After the payment due date had passed, appellants paid their 2018 tax liability.

5. Consequently, FTB imposed a late-payment penalty and interest.
6. Appellants paid the balance due and filed a refund claim seeking penalty and interest abatement.

DISCUSSION

Appellants assert that the penalty and interest should be abated because they intended to pay their 2018 tax liability on the payment due date, as evidenced by the fact that they retained the services of a tax return preparer who made arrangements to have the payment electronically debited from their bank account on the payment due date. In deciding this appeal, appellants also ask us to consider that this is the first time they have failed to make a timely payment. We begin by addressing the penalty.

A late-payment penalty shall not be imposed where the failure to pay the amount shown or required to be shown on a return by the prescribed date is due to reasonable cause and not willful neglect. (R&TC, § 19132(a).) Reasonable cause means that the failure to make a timely payment occurred despite the exercise of ordinary business care and prudence. (*Appeal of Sleight* (83-SBE-244) 1983 WL 15615.)

Here, appellants have offered no explanation for their late payment, which makes it difficult to determine whether appellants' failure to make a timely payment was due to a non-negligent reason. Clearly, appellants intended to make a timely payment. However, this is not a basis for abatement of the penalty because it does not demonstrate that appellants acted with ordinary business care and prudence. This standard requires not only that appellants make all the necessary preparations to timely pay, but that they also take reasonable steps to personally ensure that a timely payment was made. (*Baccei v. U.S.* (9th Cir. 2011) 632 F.3d 1140, 1148-1149 [taxpayers have a personal, non-delegable duty to identify the payment deadline and ensure that payment was made by that deadline].)¹ To the extent that appellants relied on their tax return preparer to arrange, execute and verify their electronic payment, it is well established that such reliance does not constitute "reasonable cause" for abating the late-payment penalty. (*Ibid.*)

Regarding interest, the law is equally clear. The imposition of interest is mandatory and

¹ Because the relevant language of R&TC section 19132 pertaining to the reasonable cause exception is patterned after Internal Revenue Code section 6651, the federal courts' interpretation of the "reasonable cause" standard is persuasive authority in determining the proper construction of these California statutes. (*Andrews v. Franchise Tax Bd.* (1969) 275 Cal.App.2d 653, 658; *Rihn v. Franchise Tax Bd.* (1955) 131 Cal.App.2d 356, 360.)

may only be abated under very limited circumstances, which appellants have not alleged nor shown to have occurred here.² (See *Appeal of Shubert* (79-SBE-161) 1979 WL 4202 [holding there is no reasonable cause basis for interest abatement].)

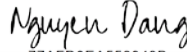
Finally, while appellants’ history of making timely payments is commendable, the law does not permit abatement of either the penalty or interest on this basis.³

HOLDING

The late-payment penalty and interest should not be abated.

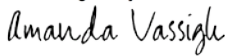
DISPOSITION

We sustain FTB’s action.


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Nguyen Dang
Administrative Law Judge

We concur:

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Amanda Vassigh
Administrative Law Judge

DocuSigned by:

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Elliott Scott Ewing
Administrative Law Judge

Date Issued: 11/17/2020

² Generally, FTB is authorized to abate interest only under very limited circumstances, such as when the accrual of interest is attributable in whole or in part to an unreasonable error or delay committed by an officer or employee of FTB in the performance of a ministerial or managerial act and certain other conditions are met under R&TC section 19104, or where the taxpayer demonstrates an inability to pay interest due to an extreme financial hardship caused by significant disability or other catastrophic circumstance (R&TC, § 19112).

³ The California Legislature has previously considered and declined to adopt bills that would allow a first-time abatement for taxpayers with a history of filing and payment compliance. (See, e.g., Assembly Bill No. 1777 (2013-2014 Reg. Sess.).)