

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:

**S. JAIN AND
N. JAIN**

) OTA Case No. 20066290
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OPINION

Representing the Parties:

For Appellants: S. Jain

For Respondent: Jean M. Cramer, Tax Counsel IV

M. GEARY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, S. Jain and N. Jain (appellants) appeal an action by respondent Franchise Tax Board denying appellants’ claim for refund of \$1,846.65 for the 2018 tax year.

Because appellants waived their right to an oral hearing, this matter is being decided on the basis of the written record.

ISSUES

1. Are appellants entitled to abatement and refund of the late-payment penalty?
2. Are appellants entitled to abatement and refund of the estimated tax penalty?
3. Are appellants entitled to abatement and refund of interest?

FACTUAL FINDINGS

1. Appellants filed their 2018 Nonresident or Part-Year Resident Income Tax Return (Form 540NR) by the extended due date, reporting an estimated tax payment of \$782, tax withholdings of \$12,836, and additional tax due of \$8,758. At the time of filing, appellants assumed that the reported tax withholdings had been paid, but they had not.

2. On October 28, 2019, appellants untimely paid the reported additional tax shown on their return, as well as an additional \$950, identified as “interest, late return penalties and late-payment penalties.”¹
3. On January 28, 2020, respondent sent appellants a Notice of Tax Return Change - Revised Balance, showing an additional amount due of \$13,732.65, which consisted of the unpaid claimed withholdings of \$12,836, plus late-payment and estimated tax penalties, and interest. The late-payment penalty assessed against appellants was based upon the reported additional tax due of \$8,758. In other words, the late-payment penalty has *not* been applied to the amounts reported to have been withheld that were not in fact withheld.
4. Appellants paid the balance due for the 2018 tax year and filed a Reasonable Cause - Individual and Fiduciary Claim for Refund (claim for refund) dated February 18, 2020. The claim for refund was for \$1,846.65, consisting of the assessed late-payment penalty (\$744.43), the estimated tax penalty (\$253.00), and interest (\$849.22).
5. By letter dated April 14, 2020, respondent denied the claim for refund. This timely appeal followed.

DISCUSSION

Issue 1: Are appellants entitled to abatement and refund of the late-payment penalty?

Absent proof that the failure was due to reasonable cause and not due to willful neglect, a late-payment penalty is imposed on a taxpayer who fails to pay the amount shown as due on the return by the date prescribed for the payment of the tax. (R&TC, § 19132(a)(1)A.) Generally, the date prescribed for the payment of the tax is the due date of the return without regard to extensions of time for filing. (R&TC, § 19001.) 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.² (*Appeal of Moren*, 2019-OTA-176P.)

¹ This is the description for amounts entered on line 122 of Form 540NR.

² There is nothing in the evidence suggestive of willful neglect, and respondent does not argue otherwise, so we will make no further mention of that element.

Appellants contend that the failure to pay the two withholding payments (totaling \$12,836) was due to their sincere, but mistaken, belief that the withholding agent had made the payments and that the amount they paid to respondent on October 28, 2019, was all that remained to be paid. They argue that the late payment was the result of this innocent mistake and that the late-payment penalty should be abated and refunded.

Respondent properly proposed the late-payment penalty because the payment due date was April 15, 2019, and appellants did not make what they then believed was the final payment required to satisfy their 2018 tax liability until October 28, 2019, more than six months after the due date. While appellants also did not pay the \$12,836 in withholding until more than nine months after the due date, respondent did not calculate the late-payment penalty based on appellants' failure to withhold and remit the \$12,836. Rather, respondent calculated the late-payment penalty based on appellants' failure to timely pay the \$8,758 in tax that they did not remit until October 28, 2019. Appellants have not made any argument or provided any evidence to explain that failure. Consequently, there is no basis for abatement of the penalty. Therefore, we must find that appellants are not entitled to abatement and refund of the late-payment penalty.

Issue 2: Are appellants entitled to abatement and refund of the estimated tax penalty?

Except as otherwise provided, California conforms to Internal Revenue Code (IRC) section 6654, which provides for an addition to tax (estimated tax penalty) when an individual fails to pay sufficient estimated tax. (R&TC, § 19136(a).) Generally, estimated tax payments are due when the required annual payment is expected to exceed the sum of all withholding and credits by \$500 or more.³ (R&TC, § 19136(b)(2).) The estimated tax penalty is similar to an interest charge in that it is calculated applying the applicable interest rate to the underpayment of estimated tax. (See IRC, § 6654(a) [calculating the estimated tax penalty by reference to the interest rate imposed on underpayments]; R&TC, § 19136(b) [referring to R&TC section 19521 which, with modification, conforms to the federal interest provisions in IRC section 6621].)

There is no provision in the IRC or R&TC that allows the estimated tax penalty to be abated based solely on a finding of reasonable cause. Consequently, there is no general reasonable cause exception to imposition of the estimated tax penalty. (*Appeal of Johnson*,

³ For California income tax purposes, R&TC section 19136.1(a)(2) generally requires that the payments be made in installments on or prior to April 15 and June 15 of the applicable tax year, and January 15 of the subsequent tax year.

2018-OTA-119P.) The estimated tax penalty is mandatory unless the taxpayer establishes that a statutory exception applies.⁴ (*Appeal of Saltzman*, 2019-OTA-070P.)

Appellants make the same argument in support of their request for abatement of the estimated tax penalty as they make in support of their request for relief of the late-payment penalty: that their failure was due to an innocent mistake concerning tax withholding. However, this is essentially a “reasonable cause” argument which, as noted earlier, is not a valid defense to an estimated tax penalty. Therefore, we find that appellants are not entitled to abatement and refund of the estimated tax penalty.

Issue 3: Are appellants entitled to abatement and refund of interest?

Taxes are due and payable as of the original due date of the taxpayer’s return (without regard to extension). (R&TC, § 19101.) If tax is not paid by the original due date or if respondent assesses additional tax and that assessment becomes due and payable, the taxpayer is charged interest on the resulting balance due, compounded daily. (*Ibid.*) Interest is not a penalty but is merely compensation for a taxpayer’s use of the money. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.) There is no reasonable cause exception to the imposition of interest.⁵ (*Ibid.*)

Appellants make the same “reasonable cause” argument in support of their request for interest abatement that they make in support of their requests for abatement of the penalties. That is not a valid basis for relief, and appellants have not argued or provided sufficient evidence to show that they are entitled to abatement of interest on any other basis. Therefore, we find that appellants are not entitled to abatement and refund interest.

⁴ There are two statutory exceptions. The taxing agency may waive the penalty: (1) when it determines that, by reason of casualty, disaster, or other unusual circumstances the imposition of the estimated tax penalty would be against equity and good conscience (IRC, § 6654(e)(3)(A)); or (2) when it determines that (i) during the applicable tax year or the preceding year, the taxpayer either retired after having attained age 62, or became disabled, and (ii) the underpayment was due to “reasonable cause” and not due to willful neglect (IRC, § 6654(e)(3)(B).) Appellants do not argue, and the evidence does not show, that either statutory exception applies here.

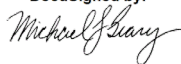
⁵ Respondent has the discretion to abate all or a part of any interest on a deficiency to the extent that interest is attributable in whole or in part to any unreasonable error or delay committed by respondent in the performance of a ministerial or managerial act, and the Office of Tax Appeals has jurisdiction to review respondent’s denial of such a request for an abuse of discretion. (R&TC, § 19104.)

HOLDINGS

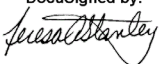
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2. Appellants are not entitled to abatement and refund of the estimated tax penalty.
3. Appellants are not entitled to abatement and refund of interest.

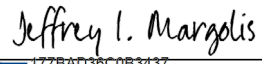
DISPOSITION

Respondent’s action denying appellants’ claim for refund of \$1,846.65 for the 2018 tax year is sustained.

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 Michael F. Geary
 Administrative Law Judge

We concur:

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 Teresa A. Stanley
 Administrative Law Judge

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 Jeffrey I. Margolis
 Administrative Law Judge

Date Issued: 4/2/2021