

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:

M. DUCKETT AND
S. DUCKETT

) OTA Case No. 20086439
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OPINION

Representing the Parties:

For Appellants:

Darren Adjei, Tax Appeals Assistance
Program (TAAP)¹

For Respondent:

Gi Jung Nam, Tax Counsel

For Office of Tax Appeals:

Amber Poon, Graduate Student Assistant

D. CHO, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. Duckett and S. Duckett (appellants) appeal an action by the Franchise Tax Board (respondent) denying appellants’ claim for refund of \$3,159.02² for the 2018 tax year.

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

ISSUES

1. Whether appellants have shown reasonable cause for failing to make a timely payment of tax for the 2018 tax year.
2. Whether appellants have established a basis for abatement of interest.

¹ Appellants filed the opening brief. Thereafter, Raziel Kohanbash of TAAP filed appellants’ reply brief.

² This amount consists of the late-payment penalty of \$2,313.28 and interest of \$845.74.

FACTUAL FINDINGS

1. On August 22, 2018, appellants sold real property to a third party for \$700,000. The escrow company withheld \$23,310 from the sale proceeds and submitted that amount to respondent.
2. On April 15, 2019, appellants made an extension payment of \$500.
3. On October 14, 2019, appellants timely filed their California Resident Income Tax Return for the 2018 tax year. Appellants reported a total tax liability of \$52,726, total payments of \$23,810, and a tax due of \$28,916.
4. On October 15, 2019, appellants made a payment of tax in the amount of \$28,916.
5. Respondent accepted appellants' California income tax return, but respondent imposed a late-payment penalty of \$2,313.28 and interest of \$828.48.
6. On November 4, 2019, respondent notified appellants of the penalty and interest by Notice of Tax Return Change – Revised Balance.
7. On January 14, 2020, appellants made a payment of \$3,159.02, and subsequently filed a claim for refund dated February 24, 2020, alleging that they were unaware of their tax liability until they prepared and filed their return.
8. Respondent denied the claim for refund, and this timely appeal followed.

DISCUSSION

Issue 1: Whether appellants have shown reasonable cause for failing to make a timely payment of tax for the 2018 tax year.

R&TC section 19132 imposes a late-payment penalty when taxpayers fail to pay the amount of tax shown as due on the return by the date prescribed for the payment of the tax. Generally, the date prescribed for the payment of the tax is the due date of the return (determined without regard to any extension of time for filing the return). (R&TC, § 19001.) Appellants do not dispute that their payment was late or that respondent properly calculated the late-payment penalty amount. Thus, the only remaining issue is whether appellants have demonstrated reasonable cause for their failure to make a timely payment of tax.

The late-payment penalty may be abated if the taxpayers show that the failure to make a timely payment of tax was due to reasonable cause and was not due to willful neglect. (R&TC, § 19132(a)(1).) To establish reasonable cause for the late payment of tax, taxpayers 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. (*Appeal of Friedman*, 2018-OTA-077P.) The taxpayers bear the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Ibid.*) The failure to timely remit the balance due on a tax liability caused by an oversight does not, by itself, constitute reasonable cause. (*Ibid.*) Furthermore, the taxpayers must show more than a lack of documentation or difficulty in calculating the tax liability had resulted in a delay in payment. (*Appeal of Moren*, 2019-OTA-176P.) Reasonable cause based on insufficient information requires the taxpayers to demonstrate the efforts made to retrieve records from third parties or acquire the information necessary to determine the tax liability. (*Ibid.*) In addition, to establish that the late payment of tax was not due to willful neglect, the taxpayers must prove the absence of a conscious, intentional failure or reckless indifference in failing to make a timely payment. (*Appeal of Triple Crown Baseball LLC*, 2019-OTA-025P.)

On appeal, appellants contend that they lacked the necessary information to calculate their tax liability when the tax payment was due. Appellants assert that it was not until they prepared and filed their return by the extended filing due date of the return that they were able to accurately calculate their tax liability. As a result, appellants believed that they have reasonable cause for the late payment of their taxes. However, appellants have not explained what information they lacked, when they were able to obtain such information, and what efforts they made to obtain this information prior to the deadline for payment of their taxes. Accordingly, we find that this argument does not warrant a finding of reasonable cause.

Appellants also argue that they believed that the withholding amount from the sale of real property would have been sufficient to extinguish any outstanding tax liability.³ In support of this argument, appellants reference a previous experience where they sold real property in 2014, and appellants received a refund of some of the withholding amount when they filed their taxes for that year. Similarly, appellants argue that in the 2018 tax year, appellants paid federal taxes of \$106,976 and California state taxes of \$52,726, which was approximately 50 percent when comparing state to federal taxes. Appellants explain that in the 2017 tax year, they paid federal

³ Appellants contend that they relied on the instructions to Form 593; however, appellants have not explained how the instructions to Form 593 have any bearing on establishing reasonable cause. Nonetheless, we note that the instructions do not state that the withholding amount will satisfy any and all tax liabilities. Therefore, we find this argument unpersuasive.

taxes of \$26,216 and California state taxes of \$6,834, which was approximately 26 percent. However, these arguments and contentions do not explain why appellants were unable to calculate their tax liability by the payment due date. Once again, appellants' arguments and explanations do not establish what information they lacked prior to the payment due date, when they received the necessary information, and what steps they took to try and obtain such information prior to the payment due date. Therefore, we find these arguments unpersuasive.

Lastly, appellants argue that even if they are unable to demonstrate reasonable cause, they should be relieved of the late-payment penalty because they did not have willful neglect. As previously stated, R&TC section 19132(a)(1) allows for the abatement of the late-payment penalty if the taxpayers can show that the failure to make a timely payment of tax was due to reasonable cause *and* was not due to willful neglect. The statute requires taxpayers to demonstrate that they meet both requirements for the penalty to be abated. Appellants have failed to meet the first requirement of demonstrating reasonable cause. Therefore, we do not need to go any further and address appellants' arguments that they meet the second requirement of the statute.

Issue 2: Whether appellants have established a basis for abatement of interest.

Imposing interest on a tax deficiency is mandatory. (R&TC, § 19101(a).) Interest for a late-payment penalty is charged from the original due date of the return to the date the penalty is paid. (R&TC, § 19101(c)(2)(B).) Interest is not a penalty but is compensation for the taxpayers' use of money after it should have been paid to the state, and it can only be abated in certain limited situations when authorized by law. (*Appeal of Moy*, 2019-OTA-057P.) There is no reasonable cause exception to the imposition of interest. (*Ibid.*)

To obtain interest abatement or waiver, appellants must qualify under one of the following statutes: R&TC sections 19104, 21012, or 19112. First, R&TC section 19104 does not apply here because appellants do not allege, and the evidence does not show, that the interest at issue is attributable, in whole or in part, to any unreasonable error or delay by an officer or employee of respondent when performing a ministerial or managerial act. Second, R&TC section 21012 does not apply as respondent did not provide appellants with any requested written advice. Lastly, even if appellants had sought a waiver of interest under R&TC section 19112 and was denied by respondent, the Office of Tax Appeals does not have jurisdiction to review respondent's denial of a waiver of interest under R&TC section 19112, which requires a showing

of extreme financial hardship. (See *Appeal of Moy, supra.*) Accordingly, appellants fail to demonstrate that they are entitled to interest abatement or waiver.

HOLDINGS

1. Appellants have not shown reasonable cause for failing to make a timely payment of tax for the 2018 tax year.
2. Appellants have not established a basis for abatement of interest.

DISPOSITION

Respondent’s action in denying appellants’ claim for refund is sustained.

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Daniel Cho

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Daniel K. Cho

Administrative Law Judge

We concur:

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Andrea L.H. Long

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Andrea L.H. Long

Administrative Law Judge

DocuSigned by:

John O. Johnson

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John O. Johnson

Administrative Law Judge

Date Issued: 7/14/2021