

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:

**N. NETZAH AND
R. NETZAH**

) OTA Case No. 20096623
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OPINION

Representing the Parties:

For Appellants:

N. Netzah and R. Netzah

For Respondent:

Eric A. Yadao, Tax Counsel III

For Office of Tax Appeals:

Amber Poon, Graduate Student Assistant

A. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, N. Netzah and R. Netzah (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$857.06 for the 2019 taxable year.

Appellants waived their right to an oral hearing. Therefore, we decide this appeal based on the written record.

ISSUES

1. Whether appellants have shown reasonable cause for failing to make a timely payment of tax for the 2019 taxable year.
2. Whether appellants have established a basis for abatement of interest.

FACTUAL FINDINGS

1. On March 18, 2020, FTB issued a press release announcing that it was postponing until July 15, 2020, the filing and payment deadlines for individual tax returns for the 2019 taxable year due to the Covid-19 pandemic.
2. On July 1, 2020, FTB received appellants’ California personal income tax return for the 2019 taxable year. Appellants attempted to schedule an electronic payment of \$15,247 to

- pay their balance due for 2019. However, appellants made an error when inputting their bank routing number, and as a result FTB could not process appellants' payment.
3. On August 5, 2020, appellants made a successful electronic payment of \$16,104.06, comprised of the tax of \$15,247.00 and a late payment penalty of \$811.14, plus applicable interest of \$45.92.¹ In addition, appellants filed a claim for refund for the late payment penalty and related interest, and contended that they received no notice of a rejected payment and that FTB's website instructed them to wait three weeks before contacting the agency.
 4. On August 20, 2020, FTB denied the claim for refund because appellants failed to show reasonable cause for their late payment of tax.
 5. This timely appeal followed.

DISCUSSION

Issue 1: Whether appellants have shown reasonable cause for failing to make a timely payment of tax for the 2019 taxable year.

R&TC section 19132 imposes a late payment penalty when a taxpayer fails to pay the amount 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 (without regard to any extension of time for filing such return). (R&TC, § 19001.) The late payment penalty is comprised of two parts. The first part is 5 percent of the unpaid tax. (R&TC, § 19132(a)(2)(A).) The second part is a penalty of 0.5 percent of the unpaid tax, per month or a portion thereof, not to exceed 40 months. (R&TC, § 19132(a)(2)(B).)

The late payment penalty will be abated if the taxpayer establishes that the failure to make a timely tax payment was due to reasonable cause and not due to willful neglect.² (R&TC, § 19132(a)(1).) To establish reasonable cause for the late payment of tax, the taxpayer must show that the failure to make a timely payment of the proper amount occurred despite the exercise of ordinary business care and prudence. (*Appeal of Friedman*, 2018-OTA-077P.) The

¹ FTB states that it imposed a late payment penalty of \$857.06. However, the correct penalty amount is \$811.14, which includes the two parts of the late payment penalty. The remaining amount is the applicable interest, separately charged, of \$45.92.

² FTB does not contend, and the evidence does not suggest, that the late payment was due to willful neglect. Hence, we address only whether appellant has established reasonable cause.

taxpayer bears 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.*)

Here, appellants contend that they have reasonable cause for the late payment because they did not receive notice from FTB of the failed electronic payment and relied on instructions from FTB's website to wait three weeks before contacting the agency. First, a lack of notice from FTB of a failed electronic payment does not negate appellants' duty of prudence and due care to verify that their scheduled payment was successful. (*Appeal of Scanlon*, 2018-OTA-075P). Second, the confirmation e-mail regarding appellants' first attempted electronic payment instructed appellants to allow up to two business days from the payment date for their bank account to reflect their payment. We would expect reasonably prudent taxpayers exercising ordinary business care and prudence to monitor their bank account, quickly ascertain whether a scheduled electronic payment to FTB was successful, and, if necessary, make further attempts to pay by the postponed deadline on July 15, 2020. Although appellants promptly paid the balance due after it came to their attention, this did not occur until three weeks after appellants' tax payment was due. Therefore, appellants have not established that their failure to timely pay their tax liability was due to reasonable cause.

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 taxpayer's 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, 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 FTB when performing a ministerial or managerial act. Second, R&TC section 21012 does not apply as FTB did not provide appellants with any requested written advice. Lastly, appellants do

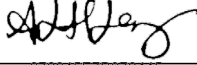
not allege, and the evidence does not show, that appellants are unable to pay interest due to “extreme financial hardship caused by significant disability or other catastrophic circumstance.” (R&TC, § 19112.) In any event, OTA does not have jurisdiction to review FTB’s denial of a waiver of interest under R&TC section 19112. (*Appeal of Moy, supra.*) Accordingly, appellants fail to demonstrate that they are entitled to interest abatement.

HOLDINGS

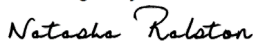
1. Appellants have not shown reasonable cause for failing to make a timely payment of tax for the 2019 taxable year.
2. Appellants have not established a basis for abatement of interest.


DISPOSITION

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

DocuSigned by:

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 Andrea L.H. Long
 Administrative Law Judge

We concur:

DocuSigned by:

 25F8FE08EF56478...
 Natasha Ralston
 Administrative Law Judge

DocuSigned by:

 CB1E7DA37831416...
 Josh Lambert
 Administrative Law Judge

Date Issued: 8/19/2021