

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
J. MORGAN

) OTA Case No. 20025878
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OPINION

Representing the Parties:

For Appellant:

J. Morgan

For Respondent:

Eric R. Brown, Tax Counsel III
Maria Brosterhous, Tax Counsel IV

A. VASSIGH, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. Morgan (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$62,109.97 for the 2018 tax year.

Office of Tax Appeals Administrative Law Judges Cheryl L. Akin, John O. Johnson, and Amanda Vassigh held an oral hearing for this matter via web-based conferencing on October 19, 2021. At the conclusion of the hearing, the record was closed, and this matter was submitted for decision.

ISSUES

1. Whether appellant has met his burden to show that the late payment penalty should be abated.
2. Whether appellant has established a basis for abatement of the estimated tax penalty.
3. Whether appellant has shown any basis to abate interest.

FACTUAL FINDINGS

1. Appellant attempted to make an online payment in the amount of \$500,000 to FTB on April 15, 2019. FTB's online payment site provided appellant with a screen page (Web Pay – Confirmation) showing a confirmation number for the attempted payment.
2. The Web Pay – Confirmation noted the “Date Request Made” as April 15, 2019, and advised to allow for up to two business days for appellant's bank account to reflect the payment. In addition, the Web Pay – Confirmation stated, “To confirm your payment has been cleared, review your bank account statement or contact your bank.”
3. For unknown reasons, the attempted payment was not remitted to FTB.
4. FTB sent appellant a Notice of Tax Return Change on November 14, 2019, advising appellant that the tax remained unpaid, and imposing an estimated tax penalty, late payment penalty, and assessed interest.
5. Appellant paid the full tax, penalty and interest on December 2, 2019, and subsequently filed a claim for refund of the penalties and interest.
6. FTB denied appellant's claim for refund and appellant then filed this timely appeal.

DISCUSSION

Issue 1 - Whether appellant has met his burden to show that the late payment penalty should be abated.

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 extensions of time for filing). (R&TC, § 19001.) Here, FTB imposed the late payment penalty because the payment due date was April 15, 2019, and appellant's payment for the 2018 tax liability was not received until December 2, 2019, over seven months after the due date. It is undisputed that the tax payment was made on December 2, 2019, and therefore the penalty was properly imposed.

The late payment penalty may be abated if the taxpayer shows 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).) The taxpayer bears the burden of proving the existence of both conditions. (*Appeal of Friedman*, 2018-OTA-077P.) 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. (*Appeal of Scanlon*, 2018-OTA-075P.)

A failure to pay will be considered due to reasonable cause if the taxpayer makes a satisfactory showing that he exercised ordinary business care and prudence in providing for the payment of his tax liability and was nevertheless either unable to pay the tax or would suffer undue hardship if they paid on the due date. (Treas. Reg. § 301.6651-1(c)(1); *Nasir v. Commissioner*, T.C. Memo. 2011-283.) The failure to timely remit the balance due on a tax liability caused by an oversight does not, by itself, constitute reasonable cause. (*Appeal of Friedman, supra.*)

Appellant attempted to make his tax payment through FTB’s online payment system in April 2019, and we find credible his assertion that he believed the payment went through. Appellant provides a printout of a screen from the online payment system, bearing the title of “Web Pay – Confirmation,” which lists his name and indicates that a request for payment of \$500,000 was made to be applied to his 2018 tax year. The Web Pay – Confirmation shows both a “Date Request Made” and a “Payment Date” of April 15, 2019.

Appellant testified at the hearing that he did not realize that the funds had not been debited from his bank account per his April 15, 2019 attempt to pay online. It is not clear why the funds were not debited from appellant’s account – appellant testified that the funds were available but that no debit attempt was made. Nor could FTB provide an explanation for why the payment attempt was not successful.¹ We do not know if the failure was due to system error or user error, but we do know that no payment was made until December 2, 2019. We believe that appellant made a good faith effort to pay his 2018 tax liability on April 15, 2019, and that he believed the Web Pay – Confirmation served as proof of payment. We acknowledge that once appellant was apprised of the unpaid tax bill, he paid his 2018 tax account in full without further delay.

However, the issue before this panel is whether appellant had reasonable cause for the late payment of his 2018 tax liability. We understand that the title of the Web Pay – Confirmation page led appellant to believe that his payment had been made, but the Web Pay –

¹ In its opening brief, FTB states that appellant “entered the incorrect account information” in the Web Pay system. However, at the hearing, FTB stated that it did not know why the payment did not go through, and that “it doesn’t indicate that on the payment screen.”

Confirmation indicates the possibility of a failed payment, as it advises taxpayers how to confirm that a payment has cleared. Furthermore, FTB cannot provide immediate proof of payment as payments take time to process, bank accounts do not always contain sufficient funds, and various system and user errors (such as entering an incorrect account number) are possible. Therefore, while we understand how one could misconstrue the purpose of the Web Pay - Confirmation, it was not reasonable for appellant to rely solely on it as proof that the requested payment had been successfully debited from his account.

Appellant only became aware that his April 15, 2019 attempted payment was unsuccessful when he received FTB's Notice of Tax Return Change on November 14, 2019, approximately seven months after the due date and failed payment attempt. During that time, appellant never verified that the money was remitted to FTB. The attempted payment was of a significant amount, such that it would be reasonable to expect a taxpayer exercising due care and diligence to notice that the payment was not debited from the bank account. The law is clear that the exercise of ordinary business care and prudence includes an expectation that a reasonably prudent taxpayer would monitor the bank account and quickly ascertain whether a scheduled electronic payment to FTB was properly paid. (*Appeal of Scanlon, supra.*)

These facts do not form a basis for granting relief from the penalty. Appellant has not established that his failure to timely pay his 2018 tax was due to reasonable cause.

Issue 2 - Whether appellant has established a basis for abatement of the estimated tax penalty.

California conforms to Internal Revenue Code (IRC) section 6654, and imposes an estimated tax penalty for the failure to timely make estimated income tax payments. (R&TC, § 19136(a); IRC, § 6654.) The estimated tax penalty is similar to an interest charge, and applies from the due date of the estimated tax payment until the date it is paid. (IRC, § 6654(b)(2); *Appeal of Scanlon, supra.*) Appellant does not deny that he made no estimated tax payments for the 2018 tax year. Even if appellant's attempted tax payment on April 15, 2019, had been successful, he would not have paid any estimated tax payments as required.

Appellant appears to argue that the penalty amount should be refunded based on reasonable cause. However, there is no general reasonable cause exception to the estimated tax penalty. (*Appeal of Johnson, 2018-OTA-119P.*) Accordingly, appellant has failed to establish a basis on which to abate the estimated tax penalty.

Issue 3 - Whether appellant has shown any basis to abate interest.

Imposing interest is mandatory, and FTB cannot abate interest except where authorized by law. (R&TC, § 19101(a); *Appeal of Balch*, 2018-OTA-159P.) Interest is not a penalty; it is compensation for the use of money. (*Appeal of Balch*, *supra*.) There is no reasonable cause exception to the imposition of interest. (*Appeal of Gorin*, 2020-OTA-018P.) Generally, to obtain relief from interest, taxpayers must qualify under R&TC sections 19104, 19112, or 21012.

Other than appellant’s main argument that he had reasonable cause for untimely payment of his 2018 tax liability, he does not specify why he may be entitled to interest abatement. Appellant does not allege that any of the three statutory provisions for interest abatement apply to the facts of this case; and based on the arguments presented and the evidence in the record, we conclude that none of these statutory provisions apply. Therefore, appellant has not shown that he is entitled to interest abatement.

HOLDINGS

1. Appellant has not met his burden to show that the late payment penalty should be abated.
2. Appellant has not established a basis for abatement of the estimated tax penalty.
3. Appellant has not shown any basis to abate interest.

DISPOSITION

FTB’s denial of appellant’s claim for refund is sustained.

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Amanda Vassigh
Administrative Law Judge

We concur:

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Cheryl L. Akin
Administrative Law Judge

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John O. Johnson
Administrative Law Judge

Date Issued: 12/14/2021