

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 21037473
)
R. DAVIDSON AND)
S. DAVIDSON)
)
)

OPINION

Representing the Parties:

For Appellants:	Dr. R. Davidson
For Respondent:	Eric R. Brown, Tax Counsel III Maria Brosterhous, Tax Counsel IV

H. LE, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, R. Davidson and S. Davidson (appellants) appeal an action by the Franchise Tax Board (respondent) denying appellants' claim for refund of \$524.20, plus applicable interest, for the 2019 tax year.

Office of Tax Appeals Administrative Law Judges Huy "Mike" Le, John O. Johnson, and Elliott Scott Ewing held an electronic oral hearing for this matter on November 18, 2021. At the conclusion of the hearing, the record was closed and this matter was submitted for an opinion.

ISSUES

1. Whether appellants have established reasonable cause to abate the late-payment penalty.
2. Whether appellants have demonstrated that they are entitled to abatement of the estimated tax penalty.
3. Whether appellants have established a basis for abatement of interest.

FACTUAL FINDINGS

1. On July 14, 2020, appellants attempted to make a \$6,000 payment via respondent's Web Pay system and received a confirmation that stated, "Allow up to 2 business days from the payment date for your bank account to reflect your payment. To confirm your

payment has been cleared, review your bank account statement or contact your bank.”
However, the attempted payment was dishonored.

2. Three months later, on October 10, 2020, appellants filed a timely California resident income tax return for the 2019 tax year, reporting total tax of \$5,248, claiming estimated tax and other payments of \$6,000, and self-assessed \$166 as an estimated tax penalty, among other items.
3. Then, on November 18, 2020, respondent sent a Notice of Tax Return Change - Revised Balance to appellants. The notice reflected that appellants’ reported payment of \$6,000 was incorrect, and that the payment amount was zero. The notice also reflected that respondent imposed a \$358.20 late-payment penalty, and listed the self-assessed \$166 estimated tax penalty. The notice showed a revised balance due of \$5,384.59.
4. On December 4, 2020, appellants paid \$6,000 to respondent, of which \$5,396.12 was applied to appellants’ tax liability and penalties (including interest), and the remaining \$603.88 was refunded to appellants. On this same day, appellants submitted a penalty waiver request, which respondent treated as a claim for refund.
5. Respondent denied appellants’ claim for refund. This timely appeal followed.

DISCUSSION

Issue 1: Whether appellants have established reasonable cause to abate the late-payment penalty.

R&TC section 19132 imposes a penalty when a taxpayer fails to pay the tax shown on a return by the original filing deadline. For the 2019 tax year, the original filing deadline is July 15, 2020.¹ Here, respondent properly imposed the late-payment penalty because appellants failed to timely pay all of the tax due, as shown on their tax return for the 2019 tax year. Appellants do not dispute the payment was late, nor do they dispute respondent’s calculation of the penalty. The only question is whether grounds exist to abate the penalty.

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.² (R&TC,

¹ R&TC section 18572, which incorporates Internal Revenue Code section 7508A, gives respondent the authority to postpone time-sensitive acts. The filing deadline for the 2019 tax year was postponed from April 15, 2020, to July 15, 2020 due to the COVID-19 pandemic.

² There are no allegations of willful neglect in this appeal. Thus, our sole focus here is on reasonable cause.

§ 19132(a)(1).) To establish reasonable cause for the late payment of tax, a taxpayer must show that the failure to make a timely payment of the tax due occurred despite the exercise of ordinary business care and prudence. (*Appeal of Triple Crown Baseball LLC*, 2019-OTA-025P.) The taxpayer bears the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Appeal of Moren*, 2019-OTA-176P.)

Here, appellants attempted to make payment via respondent’s Web Pay system before the July 15, 2020 due date and received a confirmation that stated respondent received appellants’ payment request. The confirmation also stated, “Allow up to 2 business days from the payment date for your bank account to reflect your payment. To confirm your payment has been cleared, review your bank account statement or contact your bank.” However, appellants did not check their bank account and, for reasons unknown to both parties, the payment was dishonored.

On December 4, 2020, appellants correctly made payment after receiving a notice of a balance due from respondent. But this was almost five months after the payment due date. “We would expect reasonably prudent taxpayers exercising due care and diligence to monitor their bank account and quickly ascertain whether a scheduled electronic payment from their account to [respondent] was in fact paid.” (*Appeal of Scanlon*, 2018-OTA-075P.) Thus, because they failed to monitor their bank account and quickly ascertain whether payment to respondent was in fact paid, we find that appellants have not established reasonable cause to abate the late-payment penalty.³

Issue 2: Whether appellants have demonstrated that they are entitled to an abatement of the estimated tax penalty.

Internal Revenue Code (IRC) section 6654 imposes an addition to tax, which is treated and often referred to as a penalty, when an individual fails to timely pay estimated tax. Subject to certain exceptions not relevant to the issue on appeal, R&TC section 19136 incorporates IRC section 6654. The estimated tax penalty is similar to an interest charge in that it is calculated by applying the applicable interest rate to the underpayment of estimated tax. (See IRC,

³ Appellants also argue that appellant-husband is a physician who was busy attending to patients during the COVID-19 pandemic. Although we commend appellant-husband’s services during these challenging times, appellants have not submitted documentary evidence to support this argument. Unsupported assertions are insufficient to establish reasonable cause. (*Appeal of Scanlon*, 2018-OTA-075P.) In addition, appellants did not explain why appellant-wife, who is jointly liable for the tax payment, was not able to verify that timely payment to respondent was made.

§ 6654(b)(2).) There is no general reasonable cause exception to imposition of the estimated tax penalty. (*Appeal of Johnson*, 2018-OTA-119P.) The estimated tax penalty is mandatory unless the taxpayer establishes that a statutory exception applies. (*Ibid.*)

Appellants make the same reasonable cause argument for abatement of the underpayment of estimated tax penalty as they do for the late-payment penalty. However, unlike the late-payment penalty, there is no authority to abate the underpayment of estimated tax penalty based on reasonable cause.⁴ Therefore, we need not discuss appellants' reasonable cause argument as it relates to this penalty, and the underpayment of estimated tax penalty should not be abated.

Issue 3: Whether appellants have established a basis for abatement of interest.

Imposing interest on a tax deficiency is mandatory. (*Appeal of Moy*, 2019-OTA-057P.) Interest is not a penalty, but compensation for the taxpayer's use of money after it should have been paid to the state. (*Ibid.*) It can only be abated in certain limited situations when authorized by law. (*Ibid.*) 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: R&TC section 21012, 19112, or 19104. R&TC section 21012 is inapplicable here because respondent did not provide appellants with any written advice. R&TC section 19112 is also inapplicable here because appellants do not argue or demonstrate an inability to pay interest solely because of extreme financial hardship caused by significant disability or other catastrophic circumstances.⁵

Turning to R&TC section 19104, respondent is authorized to abate or refund interest if there has been an unreasonable error or delay in the performance of a ministerial or managerial act by an employee of respondent. However, an error or delay shall be taken into account only if no significant aspect of that error or delay can be attributed to the taxpayer involved and *after respondent has contacted the taxpayer in writing with respect to that deficiency or payment.* (R&TC, § 19104(b).)

Here, appellants contend respondent unreasonably took four months to inform appellants on November 18, 2020, that their payment was dishonored. However, the November 18, 2020

⁴ There are a few limited exceptions to the penalty (see, e.g., IRC, § 6654(e)(3)(A) & (B)) but appellants do not raise any of them here.

⁵ Furthermore, OTA does not have jurisdiction to review respondent's interest determinations based on a claim of financial hardship under R&TC section 19112. (*Appeal of Moy, supra.*)

notice was respondent’s first contact to appellants with respect to the underpayment. Under R&TC section 19104(b), a delay shall be taken into account only *after* respondent has contacted the taxpayer in writing with respect to that payment—not before. Accordingly, we find there is no basis under R&TC section 19104 to abate interest for the period before respondent first contacted appellants on November 18, 2020.

HOLDINGS

1. Appellants have not established reasonable cause to abate the late-payment penalty.
2. Appellants have not demonstrated that they are entitled to an abatement of the estimated tax penalty.
3. Appellants have not established a basis for abatement of interest.

DISPOSITION

We sustain respondent’s denial of appellants’ claim for refund.

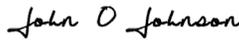
DocuSigned by:

 Huy "Mike" Le
 Administrative Law Judge

We concur:

DocuSigned by:

 Elliott Scott Ewing
 Administrative Law Judge

DocuSigned by:

 John O. Johnson
 Administrative Law Judge

Date Issued: 1/10/2022