

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of:  
**A. LOKEY**

) OTA Case No. 21067967  
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**OPINION**

Representing the Parties:

For Appellant: A. Lokey

For Respondent: Reed Schreiter, Tax Counsel IV

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, A. Lokey (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$11,145, consisting of a late-payment penalty of \$6,264.25 and an underpayment of estimate tax penalty (estimated tax penalty) of \$4,881.00,<sup>1</sup> plus applicable interest, for the 2019 taxable year.

Appellant waived the right to an oral hearing; therefore, we decide the matter based on the written record.

**ISSUES**

1. Has appellant established reasonable cause to abate the late-payment penalty?
2. Has appellant established a basis to waive the estimated tax penalty?
3. Has appellant established a basis to waive interest?

**FACTUAL FINDINGS**

1. Appellant filed a timely California Resident Income Tax Return for taxable year 2019. On that return appellant reported estimated tax payments of \$340,000. Appellant also self-assessed an estimated tax penalty of \$3,627.

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<sup>1</sup> Appellant disputes the estimated tax penalty although she self-assessed an estimated tax penalty of \$3,627 on her 2019 California tax return.

2. On September 30, 2020, FTB issued to appellant a Notice of Tax Return Change – Revised Balance. The notice explained that appellant’s claimed estimated tax payments were reduced by \$100,000 to \$240,000, imposed a late-payment penalty of \$6,264.24 plus accrued interest, and revised the estimated tax penalty to \$4,881.00.
3. Appellant paid \$100,000 on October 12, 2020, and the balance of the penalties and interest on January 6, 2021.
4. Appellant responded to FTB’s notice noting her disagreement with the additional penalties and interest and included a copy of an email she received from FTB’s Web Pay system on January 14, 2020, with the subject line captioned “Confirmation Web Pay *Scheduled*” (italics added). The email advised appellant to allow up to two business days from the payment date for her bank account to reflect the payment, and then instructed appellant to confirm the payment had cleared by reviewing her bank account statement or contacting her bank.
5. FTB treated appellant’s letter as a timely claim for refund, which it denied.
6. This timely appeal followed.

### DISCUSSION

#### Issue 1: Has appellant established reasonable cause to abate the late-payment penalty?

The personal income tax “shall be paid at the time and place fixed for filing the return (determined without regard to any extension of time for filing the return).” (R&TC, § 19001.) R&TC section 19132 provides that a late-payment penalty shall be imposed when a taxpayer fails to pay the amount shown as due on the return on or before the original due date of the return. Here it is undisputed that appellant failed to timely pay tax in the amount of \$100,000, and therefore the penalty was properly imposed.<sup>2</sup>

The late-payment penalty may be abated if a taxpayer shows that the failure to make a timely payment of tax was due to reasonable cause and not due to willful neglect. (R&TC, § 19132(a).) To establish reasonable cause for a late payment of tax, a taxpayer must show that his or her 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.) Unsupported assertions are not sufficient to satisfy a taxpayer’s burden of proof. (*Ibid.*)

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<sup>2</sup> Appellant does not dispute the calculation of the penalty.

Appellant asserts that it was reasonable for her to pay taxes late because appellant “diligently entered” the payment information and received an email confirmation from FTB’s Web Pay system. Appellant further contends that FTB did not meet “its responsibility as an e-commerce site” because FTB did not inform appellant that there was a problem with the payment information she entered.

We would expect a reasonably prudent person to verify the bank account information he or she entered into FTB’s Web Pay system. Appellant was responsible for entering the correct bank account information, and it was she who made the error. In addition, appellant failed to follow the instructions in the email that appellant refers to as confirmation of payment. The Web Pay email only indicates that a payment is *scheduled*, not that payment is completed. The Web Pay email refers to circumstances that may cause the payment to be rejected, such as where the banking information entered is incorrect, the bank account is closed, or the financial institutions rejects the request. Appellant did not wait two business days and then review her bank account or contact her bank to ensure the payment cleared, as instructed by the Web Pay email. It is appellant’s responsibility to monitor her bank account and quickly ascertain whether a scheduled electronic payment to FTB was in fact paid. (*Appeal of Scanlon, supra.*) Lack of notice from FTB of a failed payment does not negate appellant’s duty of prudence and due care to verify that her scheduled payment was successful. (*Ibid.*) Because appellant did not follow up to ensure the payment was actually made, we find that she did not act as a reasonably prudent person, and thus appellant has failed to establish reasonable cause for the late payment of tax.

Issue 2: Has appellant established a basis to waive the estimated tax penalty?

Subject to certain exceptions not relevant to this appeal, R&TC section 19136 incorporates Internal Revenue Code (IRC) section 6654 but modifies the due dates and amounts for payment of estimated taxes. IRC section 6654 imposes an estimated tax penalty when an individual fails to timely pay estimated tax. The estimated tax penalty is like an interest charge in that it is calculated by applying the interest rate imposed on the amount of the underpaid estimated tax. (See IRC, § 6654(a) [calculating 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 § 6621]; *Appeal of Johnson*, 2018-OTA-119P.) No provision in the IRC or R&TC allows the estimated tax penalty to be abated based solely on a finding of reasonable cause and, therefore, the estimated tax

penalty under IRC section 6654 is mandatory unless the taxpayer establishes that a statutory exception applies.<sup>3</sup> (*Appeal of Johnson, supra.*)

Appellant underpaid each of the three required estimated tax amounts for taxable year 2019, and FTB properly assessed the estimated tax penalty. Appellant has alleged no basis upon which we may waive the estimated tax penalty. Furthermore, appellant self-assessed an estimated tax penalty, albeit in a different amount than FTB, acknowledging the failure to pay her estimated taxes on time.

Issue 3: Has appellant established a basis to waive interest?

Imposing interest on a tax deficiency is mandatory. (R&TC, § 19101(a).) Interest is not a penalty imposed on the taxpayer; it is compensation for the taxpayer’s use of money after it should have been paid to the state. (*Appeal of Moy, 2019-OTA-057P.*) There is no reasonable cause exception to the imposition of interest, and it can only be abated in certain limited situations when authorized by law. (*Ibid.*) To obtain relief from interest, a taxpayer must qualify under the waiver provisions of R&TC sections 19104, 19112, or 21012. (*Appeal of Balch, 2018-OTA-159P.*) The relief of interest under R&TC section 21012 is not relevant here, because FTB did not provide appellant with any written advice. Under R&TC section 19104, FTB 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 FTB. Here, appellant has not alleged, and the record does not reflect, any such errors or delays. Appellant does not allege a financial disability pursuant to R&TC section 19112 and, in fact, has already paid the interest. Moreover, we have no jurisdiction to overturn FTB’s decision with respect to whether appellant qualifies for relief under R&TC section 19112. (*Appeal of Moy, supra.*) Based on the foregoing, appellant has failed to establish a basis to waive interest.

HOLDINGS

1. Appellant has not established reasonable cause to abate the late-payment penalty.
2. Appellant has not established a basis to waive the estimated tax penalty.

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<sup>3</sup> Although there is no provision allowing for the abatement of the estimated tax penalty based solely on reasonable cause, IRC section 6654(e)(3) provides that FTB may waive the addition to tax if it determines either that (1) “by reason of casualty, disaster, or other unusual circumstances the imposition of such addition to tax would be against equity and good conscience,” or (2) that the failure to timely pay the estimated tax payment was due to reasonable cause, *and* the taxpayer retired after reaching age 62 or became disabled in the taxable year for which the estimated payments were required to be made or in the previous year. Appellant has not alleged either of these exceptions exist; therefore, we do not discuss them further.

3. Appellant has not established a basis to waive interest.

DISPOSITION

FTB’s action denying appellant’s claim for refund is sustained.

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Teresa A. Stanley  
Administrative Law Judge

We concur:

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Asaf Kletter  
Administrative Law Judge

DocuSigned by:  
  
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Keith T. Long  
Administrative Law Judge

Date Issued: 4/13/2022