

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:

D. VANNIER AND
L. VANNIER

) OTA Case No. 21037409
)
)
)
)
)

OPINION

Representing the Parties:

For Appellants: D. Vannier and L. Vannier

For Respondent: Noel Garcia, Tax Counsel

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, D. Vannier and L. Vannier (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$7,945.94, consisting of a late-payment penalty of \$5,974.92, a penalty for underpayment of estimated tax (estimated tax penalty) of \$568.00, and interest of \$1,403.02, for the 2019 taxable year.

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

ISSUES

- 1. Have appellants shown reasonable cause to abate the late-payment penalty?
- 2. Have appellants established a basis to abate the estimated tax penalty?
- 3. Have appellants established a basis to abate or waive interest?

FACTUAL FINDINGS

- 1. Appellants filed a timely 2019 California Resident Income Tax Return. Appellants reported adjusted gross income (AGI) in excess of \$150,000.
- 2. Appellants did not make any estimated tax payments to apply to taxable year 2019. Appellants self-assessed tax in the amount of \$85,356 and an estimated tax penalty of \$516 based on their 2018 total tax of \$13,236.

3. On June 15, 2020, appellants, using FTB’s WebPay system (FTB’s online payment portal), scheduled a tax payment to FTB (from a UMB bank account) for the total self-assessed tax. Appellants received a confirmation of their payment request. The bank did not complete the payment to FTB because appellants attempted to use a non-transactional account.
4. On September 30, 2020, FTB issued appellants a State Income Tax Balance Due Notice (the notice) in the amount of \$92,425.82, which included appellants’ self-assessed tax, and penalties totaling \$6,116.14, and applicable interest as of that date.
5. On October 12, 2020, appellants, using FTB’s WebPay system, scheduled a payment to FTB (from the same UMB bank account) for the full amount in the notice. Appellants received confirmation of the request to pay. The bank did not complete the payment to FTB because appellants attempted to use a non-transactional account.
6. On November 5, 2020, appellants, using FTB’s WebPay system, scheduled a payment to FTB (from a Wells Fargo Bank account) for the full amount in the notice. Appellants received a confirmation of their request to pay. The payment to FTB was completed.
7. On November 19, 2020, FTB issued an updated notice showing a remaining balance due of \$876.12. The late-payment penalty increased between the dates of the first and second notices, and additional interest had accrued.
8. On December 1, 2020, appellants, using FTB’s WebPay system, scheduled a payment to FTB (from a Wells Fargo Bank account) for the remaining account balance. Appellants received a confirmation of the request to pay. The payment to FTB was completed.
9. Appellants filed a claim for refund of penalties and interest, claiming reasonable cause, which FTB denied. This timely appeal followed.

DISCUSSION

Issue 1: Have appellants shown 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).”¹ (R&TC, § 19001.)

¹ For 2019 tax returns, the original due dates for filing and paying tax liabilities were postponed (not extended) to July 15, 2020. (<https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2020-3-state-postpones-tax-deadlines-until-july-15-due-to-the-covid-19-pandemic.html>; see also R&TC, § 18572.) The due dates for payment of estimated taxes (30 percent on April 15, 2019, 40 percent on June 15, 2019, and 30 percent on January 15, 2020) were not postponed or extended. (R&TC § 19136.1(a)(2); FTB Notice 2020-02.)

R&TC section 19132 provides that a late-payment penalty shall be imposed when taxpayers fail to pay the amount shown as due on the return on or before the original due date, or as here, the postponed due date, of the return. Here, it is undisputed that appellants failed to timely pay tax in the amount of \$85,356, and therefore the penalty was properly imposed.²

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 not due to willful neglect. (R&TC, § 19132(a).) To establish reasonable cause for a late payment of tax, taxpayers must show that their 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 insufficient to satisfy a taxpayer’s burden of proof. (*Ibid.*)

Appellants assert that it was reasonable for them to pay taxes late because appellants made good faith efforts to pay on time, and the attempted payment was not received by FTB “through the fault of the FTB WebPay system.” Appellants contend that the late payment was an “FTB issue.”

FTB responds that the failure was due to appellants’ error in using a non-transactional account. The payment was rejected using an automated clearinghouse (ACH) code R20, which means that payments out of the account are restricted or prohibited, per the declaration of FTB employee, C. Reali.

The evidence supports FTB’s position. Two payments from a UMB bank account were attempted and were not successfully transmitted. When appellants made the next two payment attempts using the Wells Fargo bank account, the payments were transmitted as requested. Reasonably prudent businesspeople would be expected to verify that the account selected was a transactional account through which electronic payments could be made. Moreover, had appellants followed the instructions on the WebPay confirmation and confirmed with their bank that the payments were or were not transmitted to FTB, they would have discovered their error well before receiving the notice from FTB indicating that the payment had not been made. (*Appeal of Scanlon, supra.*) Appellants have not shown what steps, if any, they took between June 15, 2020, when appellants first attempted to timely pay, and September 30, 2020, when FTB sent its first notice, to verify that funds were withdrawn from their bank account.

² Appellants did not specifically dispute the calculation of the penalty.

Based on the foregoing, appellants have not shown that they acted reasonably by simply entering information into FTB's WebPay system and never verifying that the scheduled payment was successful.³

Issue 2: Have appellants established a basis to abate 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 in IRC section 6621 imposed on underpayments]; R&TC, § 19136(b) [referring to R&TC section 19521 which, with modification, conforms to the federal interest provisions in IRC section 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.⁴ (*Appeal of Johnson, supra.*)

IRC section 6654 establishes a safe harbor that allows taxpayers to utilize two bases for determining the amount of estimated taxes to be paid. The “required annual payment” will be the lesser of 90 percent of the tax shown on the current year's tax return, or 100 percent of the prior taxable year's tax. (IRC, § 6654(d)(1)(B).) For taxpayers with AGI exceeding \$150,000, “110 percent” is substituted for “100 percent,” meaning that those taxpayers must either pay

³ The Office of Tax Appeals (OTA) does recognize that FTB's WebPay confirmation can be confusing to taxpayers. The very first word at the top says “Confirmation” in large, bold letters. It next provides a confirmation number. Only toward the end of the confirmation does FTB advise taxpayers to confirm after two business days that the payment cleared the bank account. OTA is independent of FTB and cannot make changes to the WebPay confirmation to make it more clear to taxpayers. Additionally, OTA is bound by precedential opinions holding that taxpayers do not act reasonably when they fail to monitor their bank accounts to ensure a scheduled or attempted payment cleared, especially as here where the payment is a large one. (See *Appeal of Scanlon, supra*; *Appeal of Friedman*, 2018-OTA-077P.)

⁴ 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 estimated tax penalty if it determines either that (1) “by reason of casualty, disaster, or other unusual circumstances the imposition of [the estimated tax penalty] would be against equity and good conscience,” or (2) 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. Appellants have not alleged either of these exceptions apply; therefore, this Opinion does not discuss them further.

90 percent of the current year's tax or 110 percent of the prior year's tax. (IRC, § 6654(d)(1)(C)(i).)⁵

For taxable year 2018, the record reflects that appellants' AGI exceeded \$150,000 in 2018, such that they would be required to pay at least 110 percent of their 2018 tax of \$13,236, or \$14,559.60, as calculated by FTB. Appellants did not pay estimated taxes of 90 percent of the current year's tax or 110 percent of their 2018 tax, and in fact, made no estimated tax payments. Therefore, appellants have not established error in FTB's calculation of the estimated tax penalty, and the penalty was properly imposed. As there is no reasonable cause exception to imposition of the estimated tax penalty, appellants have not established a basis to abate the estimated tax penalty.

Issue 3: Have appellants established a basis to abate or 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 or waived in certain limited situations when authorized by law. (*Ibid.*)

Appellants assert that they are entitled to waiver of interest because “[i]f legal tender is offered in payment of a debt and is refused then interest cannot be accrued on that debt.” As discussed above, appellants' unsuccessful attempts to pay do not constitute an offer in payment of a debt. FTB did not receive and reject appellants' payments, and the principle they assert without citation to authority does not relieve them of the obligation to pay interest.

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 appellants 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, appellants have not alleged, and the record does not reflect, any such errors or delays. Appellants do not allege a financial hardship pursuant to

⁵ FTB's footnote 9 in its opening brief incorrectly cites to IRC section 6654(d)(1)(C)(ii) as its basis for using 110 percent of 2018 tax. Nothing in the record suggests that appellants filed 2018 tax returns separately, and thus IRC section 6654(d)(1)(C)(i) applies.


R&TC section 19112 and, in fact, they have already paid the interest. Moreover, the Office of Tax Appeals does not have jurisdiction to overturn FTB’s decision with respect to whether appellants qualify for relief under R&TC section 19112. (*Appeal of Moy, supra.*) Based on the foregoing, appellants have failed to establish a basis to abate or waive interest.

HOLDINGS

1. Appellants have not established reasonable cause to abate the late-payment penalty.
2. Appellants have not established a basis to abate the estimated tax penalty.
3. Appellants have not established a basis to abate or waive interest.

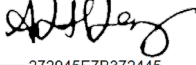
DISPOSITION

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

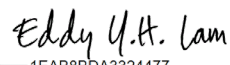
DocuSigned by:

 0CC6C6ACCC6A44D

 Teresa A. Stanley
 Administrative Law Judge

We concur:

DocuSigned by:

 272945E7B372445...

 Andrea L.H. Long
 Administrative Law Judge

DocuSigned by:

 1EAB8BDA3324477...

 Eddy Y.H. Lam
 Administrative Law Judge

Date Issued: 5/26/2022