

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:

**W. FLETCHER AND
S. FLETCHER**

) OTA Case No. 21047546
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OPINION

Representing the Parties:

For Appellants: Bruce J. Legawiec, CPA

For Respondent: David Muradyan, Tax Counsel III

M. GEARY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, W. Fletcher and S. Fletcher (appellants) appeal an action by the Franchise Tax Board (respondent) denying appellants’ claim for refund of \$706.77 for the 2019 tax year.

This matter is being decided on the basis of the written record because appellants waived their right to an oral hearing.

ISSUES

1. Are appellants entitled to abatement of the late-payment penalty?
2. Are appellants entitled to abatement of interest?

FACTUAL FINDINGS

1. On June 16, 2020, appellants filed their 2019 joint California Resident Income Tax Return, reporting a balance due.¹
2. Appellants’ balance due was not paid by the July 15, 2020 due date.

¹ Although taxes are generally due from individuals on April 15 of the year following the tax year, respondent postponed the filing and payment due date for 2019 taxes to July 15, 2020, due to the COVID-19 pandemic.

3. On September 21, 2020, respondent sent appellants a State Income Tax Balance Due Notice, which notified appellants that the amount due had increased to include additional penalty amounts and interest.
4. On September 29, 2020, appellants paid the amount reported due on their return.
5. On November 12, 2020, respondent sent appellants an Income Tax Due Notice, notifying appellants regarding the \$706.38 balance due, which consisted of the late-payment penalty and interest, and instructing appellants to pay the amount due by November 27, 2020.
6. On November 30, 2020, appellants paid the balance due.
7. Appellants filed a timely Reasonable Cause – Individual and Fiduciary Claim for Refund of \$706.77.
8. On January 12, 2021, respondent notified appellants that their claim for refund had been denied. This timely appeal followed.

DISCUSSION

Issue 1: Are appellants entitled to abatement of the late-payment penalty?

Absent proof that the failure was due to reasonable cause and not due to willful neglect, a late-payment penalty is imposed on a taxpayer who fails to pay the amount shown as due on the return by the date prescribed for the payment of the tax. (R&TC, § 19132(a)(1)A.) 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.) 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 Moren*, 2019-OTA-176P.)

Appellants argue that their honest and good faith belief that they had successfully used respondent's web-based payment system (Web Pay) to pay the amount due should constitute reasonable cause, particularly given their advanced years and their excellent filing and payment

history.² They assert that by requiring them to use Web Pay and then penalizing them when their efforts to use the system failed without their knowledge, respondent is, in effect, punishing them for their inability to meet the technical challenges inherent in that system.³

Web Pay is a multi-step process that requires taxpayer input to confirm the taxpayer's identity, the year for which the payment is being made, the amount of the payment, and the account from which the payment is to be made. The taxpayer is instructed to review the completed request before authorizing payment, and the system recommends that the taxpayer print the confirmation page. The taxpayer can also request emailed confirmation. According to respondent, the system also informs the taxpayer (and respondent) when the payment cannot be completed due to incorrect account information or insufficient funds. Web Pay appears to be a relatively simple and user-friendly process.

The evidence does not show that appellants' failure to pay the amount due by the due date was due to reasonable cause and not due to willful neglect. Appellants have provided very little information about what they did when they attempted to pay the reported amount due using the Web Pay system. We know that the return was filed on June 16, 2020, almost a month before the return and payment due date, and we know that, according to respondent, Web Pay does not indicate that there was a failed or dishonored payment. We do not know when appellants attempted the payment, what steps they completed, or what feedback they received from the system. Appellants have not provided evidence that the system confirmed a completed payment. Their argument suggests that they simply assumed the payment was completed until they received respondent's September 21, 2020 State Income Tax Balance Due Notice, which indicates they did nothing to monitor their bank account or their Web Pay account for confirmation of payment for more than two months after the payment due date. Under the facts of this case, where appellants filed their return 29 days before the due date, unsuccessfully attempted to pay the amount due using Web Pay, and apparently made no effort to confirm

² We have no evidence regarding appellants' filing or payment history. More importantly, whatever the history, it is immaterial to the issue before us. Unlike the IRS, respondent is not authorized to allow first-time abatement of penalties on the basis of a taxpayer's good filing history. As noted by appellants, the California Legislature has considered and declined to adopt bills that would change California law to allow a first-time abatement for taxpayers with a history of filing and payment compliance. It matters not how those bills met their demise. It matters only that they did not become law. We will not further address this part of appellants' argument.

³ We also have no evidence before us that appellants were required to use Web Pay or that Web Pay is a trap for unsuspecting taxpayers.

successful payment, we find that appellants have not established that the late payment was due to reasonable cause and not due to willful neglect. Consequently, appellants are not entitled to abatement of the late-payment penalty.

Issue 2: Are appellants entitled to abatement of interest?

The taxes at issue here were due and payable on July 15, 2020. When a taxpayer fails to pay the amount due by the due date, respondent charges interest on the resulting balance due, compounded daily. (R&TC, § 19101(a).) Interest is not a penalty but is merely compensation for a taxpayer's use of the money. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.)

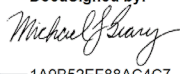
Interest relief is allowed under only a few limited circumstances. (See R&TC, §§ 19104, 19112, and 21012.) None of those circumstances are present here, and appellants do not argue otherwise. Instead, appellants appear to request interest relief on the grounds that their failure to pay the amount due by the due date was due to reasonable cause. There is no reasonable cause exception to the imposition of interest. (*Appeal of GEF Operating, Inc.*, *supra.*) Consequently, we find that appellants are not entitled to abatement of interest.

HOLDINGS

1. Appellants are not entitled to abatement of the late-payment penalty.
2. Appellants are not entitled to abatement of interest.

DISPOSITION

Respondent’s denial of appellants’ claim for refund is sustained.

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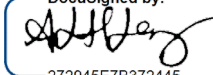
 Michael F. Geary
 Administrative Law Judge

We concur:

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 Tommy Leung
 Administrative Law Judge

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 Andrea L.H. Long
 Administrative Law Judge

Date Issued: 7/28/2022