

FACTUAL FINDINGS

1. On March 9, 2021, appellants filed a timely California Resident Income Tax Return (Form 540) for the 2020 tax year. On their tax return, appellants reported tax due of \$8,429.00 and self-assessed an estimated tax penalty of \$9.00.
2. On March 17, 2021, appellants attempted to submit a payment through FTB Web Pay with their 2020 tax return. On that same day, appellants received an automatic Confirmation Web Pay Scheduled email which included a disclaimer that stated, “If . . . the banking information you entered is incorrect . . . your financial institution may reject your request..... To confirm your payment has been cleared, review your bank account statement or contact your bank.” Appellants’ payment was dishonored due to invalid bank information.
3. On July 14, 2021, FTB issued a State Income Tax Balance Due Notice, informing appellants that they owed total penalties of \$514.74, which consisted of a late-payment penalty of \$505.74 and an estimated tax penalty of \$9.00. The notice required appellants to remit payment by July 29, 2021.
4. On August 4, 2021, appellants untimely remitted payments that satisfied the total amount due under the State Income Tax Balance Due Notice. Shortly thereafter, appellants submitted a refund claim to abate the penalties of \$514.74.
5. On September 1, 2021, FTB issued an Income Tax Due Notice because appellants did not timely remit payments to satisfy the total amount due under the State Income Tax Balance Due Notice. The Income Tax Due Notice increased the late-payment penalty to \$547.89, which also increased the total penalties due to \$556.89 (the estimated tax penalty of \$9.00 remained the same). Since appellants remitted some payments on August 4, 2021, the Income Tax Due Notice informed appellants that they had a remaining balance due of \$57.67, which appellants paid on September 4, 2021.
6. On January 13, 2022, FTB denied appellants’ claim for refund of \$556.89.
7. Appellants filed this timely appeal.

DISCUSSION

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

R&TC section 19132(a)(1)(A) imposes a late-payment penalty when taxpayers fail to pay the amount shown as due on the return by the date prescribed for payment of that tax. The late-payment penalty does not apply when the failure to pay is due to reasonable cause and not due to willful neglect. The taxpayers bear the burden of proving “reasonable cause,” which means the taxpayers must show that their failure to pay the tax in a timely manner occurred despite the exercise of ordinary business care and prudence. (*Appeal of Moren*, 2019-OTA-176P.) The taxpayers bear the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Ibid.*)

Appellants do not contest whether the late-payment penalty was properly imposed or computed. Rather, appellants assert that reasonable cause exists to abate the late-payment penalty because they reasonably assumed that their payment was processed based on FTB’s Confirmation Web Pay Scheduled email. Appellants also request that OTA take into consideration their good history of timely paying their taxes.

However, appellants’ assertions do not demonstrate reasonable cause for the late payment of tax. A taxpayer’s error attributable to an oversight, even an innocent oversight, generally will not constitute reasonable cause for penalty abatement purposes. (*Appeal of Friedman*, 2018-OTA-077P.) Here, appellants failed to show that they exercised ordinary business care and prudence. FTB’s Confirmation Web Pay Scheduled email informed appellants that they needed to review their bank account statement or contact their bank to confirm that a payment was made to FTB. Appellants have not shown that they took steps to confirm that the electronic payments were successfully withdrawn from their bank account and paid to FTB.

Furthermore, while OTA commends appellants for their good history of timely paying, neither the California Legislature nor FTB has adopted a comparable penalty abatement program based on good standing of a taxpayer’s history of timely filing and paying California taxes. As such, appellants’ argument cannot be used as a basis for abatement of the California late-payment penalty at issue here. (See *Appeal of Scanlon*, 2018-OTA-075P.) Based on the foregoing reasons, appellants have failed to show reasonable cause to abate the late-payment penalty.

Issue 2: Whether the estimated tax penalty should be abated.

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 in that it is calculated by applying the applicable interest rate to the underpayment of estimated tax. (See IRC, § 6654(b)(2).)

Appellants make the same reasonable cause argument for abatement of the estimated tax penalty as they do for the late-payment penalty. However, unlike the late-payment penalty, there is no authority to abate the estimated tax penalty based solely on reasonable cause.⁶ (See *Appeal of Scanlon, supra.*) Therefore, OTA need not discuss appellants' reasonable cause argument as it relates to this penalty, and the estimated tax penalty should not be abated.

HOLDINGS

1. Appellants have not established reasonable cause to abate the late-payment penalty.
2. The estimated tax penalty should not be abated.

DISPOSITION

FTB's action is sustained.

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Eddy Y.H. Lam

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Eddy Y.H. Lam
Administrative Law Judge

Date Issued: 8/10/2022

⁶ 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.