



3. Appellants paid the balance due and filed a claim for refund with FTB, requesting abatement of the penalties.
4. FTB denied appellants' claim for refund. This timely appeal followed.

### DISCUSSION

#### Issue 1: Have appellants established reasonable cause to abate the late-payment penalty?

R&TC section 19001 generally provides that the personal income tax imposed “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 section 19132 provides that a late-payment penalty is imposed when taxpayers fail to pay the amount shown as due on the return on or before the due date of the return. The late-payment penalty will be abated if the taxpayers show that the failure to make a timely payment of tax was due to reasonable cause and was not due to willful neglect. (R&TC, § 19132(a).) Taxpayers bear the burden to show that reasonable cause exists to abate the late-payment penalty. (*Appeal of Friedman*, 2018-OTA-077P.)

To establish reasonable cause for the late payment of tax, taxpayers 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 Friedman, supra.*) The failure to timely remit the balance due on a tax liability caused by an oversight does not, by itself, constitute reasonable cause. (*Ibid.*)

Appellants assert that they made a \$100,000 payment for the 2019 taxable year, but due to the extended deadline to pay by July 15, 2020,<sup>1</sup> they confused it for an estimated tax payment for the 2020 taxable year. Based on this mistake, appellants reported it on their 2020 tax return as an estimated tax payment for that year. Appellants request a first-time abatement of the late-filing penalty because they have otherwise always paid their state taxes on time.<sup>2</sup>

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<sup>1</sup> See FTB notice extending the payment due date 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>.)

<sup>2</sup> FTB responds that appellants did not act as ordinarily prudent businesspeople because they did not monitor their bank account. FTB also states that the deadlines for payments were on their website and that it doesn't take tax expertise to ascertain payment deadlines. FTB's response does not directly address appellants' claims. Appellants' mistake was unrelated to monitoring their bank account, particularly since the \$100,000 payment did go to FTB, so the funds were withdrawn from appellants' account. Moreover, since the filing deadlines for paying 2019 tax and 2020 estimated tax were the same (July 15, 2020), appellants' confusion is understandable.

OTA acknowledges that the extension of deadlines due to the COVID-19 pandemic may have made deadlines less clear to taxpayers and could possibly create confusion, as appellants claim happened in this case. That being said, appellants agree that they simply made a mistake. The mistake, while it may be understandable, could have been avoided through reasonable recordkeeping and cross-checking payments against taxable years. Appellants' failure to pay their 2020 tax liability on time due to a mistake or oversight has been held to not constitute reasonable cause. (*Appeal of Friedman, supra.*)

With respect to appellants' request for a first-time abatement, OTA notes that for the taxable year at issue, California did not have a first-time abatement program like the IRS administers. Beginning with taxable year 2022, California has adopted a first-time abatement program, by statute. (R&TC, § 19132.5.) The statute does not apply retroactively such that appellants' late-payment penalty may be abated. Based on the foregoing, appellants have not established reasonable cause or any other basis to abate the late-payment penalty.

Issue 2: Have appellants established a basis to abate the estimated tax penalty?

California conforms to IRC section 6654 and imposes an estimated tax penalty for the failure to timely make estimated income tax payments. (R&TC, § 19136(a); Internal Revenue Code, § 6654.) The estimated tax penalty is similar to an interest charge and applies from the due date of the estimated tax payment until the date it is paid. (IRC, § 6654(b)(2).)


Appellants do not protest the imposition or computation of the estimated tax penalty. Appellants argue that the penalty should be relieved based on reasonable cause or under a first-time abatement theory, as described above. However, there is no reasonable cause abatement of an estimated tax penalty. (*Appeal of Scanlon, 2018-OTA-075P.*) Moreover, R&TC section 19132.5 does not apply to estimated tax penalties or penalties imposed for taxable years prior to 2022. Therefore, appellants have not established a basis to abate the estimated tax penalty.

HOLDINGS


1. Appellants have not established reasonable cause to abate the late-filing penalty.
2. Appellants have not established reasonable cause to abate the late-payment penalty.


DISPOSITION

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

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 Teresa A. Stanley  
 Administrative Law Judge

We concur:

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 Ovsep Akopchikyan  
 Administrative Law Judge

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 Keith T. Long  
 Administrative Law Judge

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