

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 20127033
S. KIM AND)
D. KIM)
_____)

OPINION

Representing the Parties:

For Appellants: Hyeokjin Kwon, Enrolled Agent
For Respondent: Joel M. Smith, Tax Counsel III
Tristen Thalhuber, Graduate Student
Assistant

R. TAY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) 19324, S. Kim and D. Kim (appellants) appeal an action by Franchise Tax Board (respondent) denying appellants’ claim for refund of \$2,390.88 for the 2018 tax year.

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

ISSUE¹

Whether appellants have shown error in respondent’s proposed assessment of the late payment penalty for the 2018 tax year.

FACTUAL FINDINGS

1. Appellants timely filed their joint 2018 California income tax return on October 15, 2019. On their California income tax return, appellants reported an outstanding tax liability of \$19,462 and remitted a late payment of tax with their return.

¹ Appellants also requested a refund of interest, but did not argue that they are entitled to interest abatement under a specific interest abatement provision. (See R&TC, §§ 19104, 19112, 21012.) We also find no reason to grant relief based on the facts of this appeal. (*Appeal of Balch*, 2018-OTA-159P.)

2. Respondent issued a Notice of Tax Return Change – Revised Balance on November 12, 2019, and assessed the late payment penalty.
3. Appellants disagreed with respondent’s assessment of the penalty, and submitted documentation to support their argument that they paid more tax withholding than respondent credited to appellants’ account for the 2018 tax year. Appellants provided correspondence from the California Employment Development Department (EDD) to appellant-husband’s business (the dental office), which showed the dental office made tax payments of payroll tax and income tax withholding in 2018.
4. Appellants paid their balance due on August 5, 2020, and filed a claim for refund on September 8, 2020.
5. Respondent received information from the EDD about appellants’ income tax withholding in 2018 and adjusted its proposed assessment accordingly. Respondent granted appellants’ claim for refund in part and denied the remainder on September 25, 2020.

DISCUSSION

R&TC section 19132 imposes a late payment penalty when a taxpayer fails to pay the amount shown as due on the return by the date prescribed for the payment of the tax. 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.) Here, respondent properly assessed the late payment penalty because the payment due date was April 15, 2019, and appellants did not completely satisfy their 2018 tax liability until October 15, 2019, approximately six months after the due date.

Appellants argue that respondent’s assessment is erroneous because appellants made timely payments in the form of income tax withholding to the EDD that respondent did not include in its calculation of appellants’ balance due.² To support their argument, appellants provide correspondence from the EDD dated August 17, 2020, showing the dental office, not appellants themselves, made quarterly payments to the EDD, which included income tax withholding.

² Although appellants allege to have overpaid their 2018 tax liability, appellants only request a refund of the penalty and interest, and so, the tax is not at issue in this appeal.

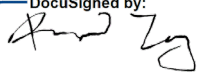
In response, respondent provides EDD records, dated August 10, 2021, which summarize appellants’ wages and withholding for the 2018 tax year. The records show that appellants only paid \$1,109 in withholding for 2018. Moreover, appellants’ correspondence from the EDD also reveal that the EDD refunded the dental office’s tax payments in excess of its payroll tax obligations in 2018. This is further supported by the summary page of the EDD account of appellant-husband’s business, which shows a negative account balance on June 30, September 30, and December 31, likely due to such excess payments. The EDD presumptively refunded those overpayments, as stated in the correspondences, resulting in a subsequent zero account balance. Thus, appellants may be correct that they (through the dental office) remitted additional timely tax payments; however, the EDD refunded those deemed overpayments, and appellants are not entitled to additional withholding credit for the refunded amounts.

HOLDING

Appellants have not shown error in respondent’s proposed assessment of the late payment penalty for the 2018 tax year.

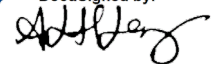
DISPOSITION

We sustain respondent’s action in full.

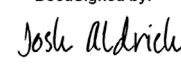
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Richard Tay
Administrative Law Judge

We concur:

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Andrea L.H. Long
Administrative Law Judge

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Josh Aldrich
Administrative Law Judge

Date Issued: 3/7/2022