

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 22019414  
L. PETERSON AND )  
J. GALAZA )  
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**OPINION**

Representing the Parties:

For Appellants: L. Peterson and J. Galaza

For Respondent: Joel M. Smith, Tax Counsel III

For Office of Tax Appeals: Amber Poon, Graduate Legal Assistant

E. LAM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, L. Peterson and J. Galaza (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$4,131.33 and applicable interest for the 2020 tax year.<sup>1</sup>

Appellants waived the right to an oral hearing; therefore, Office of Tax Appeals (OTA) decides the matter based on the written record.

**ISSUES**

1. Whether appellants demonstrated reasonable cause for the late payment of tax.
2. Whether the underpayment of estimated tax penalty (estimated tax penalty) can be abated.
3. Whether appellants established that interest should be abated.

**FACTUAL FINDINGS**

1. On June 22, 2020, appellants scheduled an estimated tax payment for the 2020 tax year through FTB’s Web Pay system. Unknown to appellants at the time, appellants

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<sup>1</sup> On appeal, appellants claim an amount at issue of \$4,131.00; however, the late payment penalty is \$2,501.33 and the estimated tax penalty is \$1,630.00. As such, Office of Tax Appeals finds that the correct amount in dispute is \$4,131.33.

- populated an inactive bank account number and FTB was unable to process the estimated tax payment. Appellants received a confirmation page that stated, as relevant here, “[t]o confirm your payment has been cleared, review your bank account statement or contact your bank.”
2. Appellants timely filed a joint 2020 California Resident Income Tax return. The return reported tax due of \$26,699, after taking into account the estimated tax payment that was never processed.
  3. On July 8, 2021, FTB issued appellants a Notice of Tax Return Change – Revised Balance (the Notice), imposing a late payment penalty, estimated tax penalty, and applicable interest.
  4. On July 29, 2021, appellants remitted the outstanding payments and filed a claim for refund of the penalties and interest, claiming reasonable cause, which FTB denied.
  5. This timely appeal followed.

### DISCUSSION

#### Issue 1: Whether appellants demonstrated reasonable cause for the late payment of tax.

R&TC section 19132 imposes a late payment penalty when taxpayers fail to pay the amount of tax 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 (determined without regard to any extension of time for filing the return). (R&TC, § 19001.) Appellants do not dispute that their payments were late or that FTB properly calculated the late payment penalty amounts. Thus, the only issue is whether appellants have demonstrated reasonable cause for their failure to timely pay their required taxes in full.

The late payment penalty may be abated if appellants 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)(1).) 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 their intent was to timely pay their 2020 estimated tax payment, as shown by the confirmation of their payment request. However, the estimated tax payment was

not timely paid because of the inadvertent error of the invalid bank account number being populated into FTB's Web Pay system. Appellants also state that they were not notified by FTB that their attempted payment could not be processed, or their bank account was inactive and were unaware of the error until they received the Notice.

However, it is well established that reasonably prudent taxpayers exercising due care and diligence would “monitor their bank account and quickly ascertain whether a scheduled electronic payment from their account to FTB was in fact paid.” (*Appeal of Scanlon, supra.*) Here, appellants populated an invalid bank account number and did not follow the instructions on the FTB's Web Pay confirmation page to confirm that the scheduled electronic payment from their account to FTB was in fact processed. Therefore, appellants have not shown that they acted as a reasonably prudent taxpayer. (*Ibid.*)

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

Internal Revenue Code (IRC) section 6654 imposes an addition to tax, which is treated as and often referred to as a penalty, where taxpayers fail to timely pay estimated tax. Subject to certain exceptions not relevant to the issues on appeal, R&TC section 19136 incorporates IRC section 6654 but modifies the due dates and amounts for payment of estimated taxes. The estimated tax penalty is similar to an interest charge in that it is calculated by applying the interest rate to the underpaid estimated tax. (See IRC, § 6654(a) [calculating estimated tax penalty by reference to the interest rate, established under IRC section 6621, imposed on underpayments]; R&TC, § 19136(b) [referring to R&TC section 19521 which, with modifications, conforms to the federal interest provisions in IRC section 6621]; *Appeal of Johnson, 2018-OTA-119P.*)

Here, appellants present the same reasonable cause arguments made with respect to the late payment penalty in their request for the abatement of the estimated tax penalties. However, unlike the late payment penalty, there is no authority to abate the estimated tax penalty based solely on reasonable cause.<sup>2</sup> Therefore, the estimated tax penalty cannot be abated.

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<sup>2</sup> 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 and the evidence in the record does not establish that these exceptions are applicable here.

Issue 3: Whether appellants established that interest should be abated.

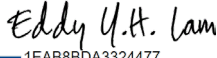
R&TC section 19101 provides that taxes are due and payable as of the original due date of the taxpayers' return (without regard to extension). If tax is not paid by the original due date or if FTB assesses additional tax and that assessment becomes due and payable, the taxpayers are charged interest on the resulting balance due, compounded daily. (R&TC, § 19101.) Interest is not a penalty, but is compensation for a taxpayer's use of money after it should have been paid to the state. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.) There is no reasonable cause exception to the imposition of interest, and interest is mandatory except where abatement is authorized under the law. (*Appeal of Moy*, 2019-OTA-057P.) Generally, to obtain relief from interest, taxpayers must qualify under one of the following three R&TC sections: 19104, 19112, or 21012. (*Ibid.*) OTA has no authority to review FTB's action under R&TC section 19112. (*Ibid.*) Here, appellants do not allege, and nothing in the record suggests, that there is any basis for interest abatement under R&TC sections 19104 and 21012. Therefore, appellants have not established that interest should be abated.

HOLDINGS

1. Appellants have not demonstrated reasonable cause for the late payment of tax.
2. The estimated tax penalty cannot be abated.
3. Appellants have not established that interest should be abated.

DISPOSITION


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

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Eddy Y.H. Lam  
 Administrative Law Judge

We concur:

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Asaf Kletter  
 Administrative Law Judge

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Amanda Vassigh  
 Administrative Law Judge

Date Issued: 4/20/2023