

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:

B. BEN-EFRAIM AND
G. BEN-EFRAIM) OTA Case No. 220410131
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)**OPINION**

Representing the Parties:

For Appellants:

B. Ben-Efraim
G. Ben-Efraim

For Respondent:

Red Gobuty, Tax Counsel IV

A. KLETTER, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, B. Ben-Efraim and G. Ben-Efraim (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants' claim for refund of \$1,118.40¹ and applicable interest for the 2020 tax year.

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

ISSUES

1. Whether appellants have shown reasonable cause for the late payment of their 2020 tax liability.
2. Whether appellants are entitled to interest abatement.

¹ The jurisdictional document, the Claim for Refund Denial letter dated March 2, 2022, identifies a disallowed amount of \$1,211.60 (representing the late payment penalty), plus applicable interest (\$109.69). As such, OTA acknowledged the appeal for \$1,211.60, plus applicable interest. FTB also contends that this is the amount subject to OTA's jurisdiction. However, FTB concedes that the late payment penalty should be reduced from \$1,211.60 to \$1,118.40 (representing a concession of \$93.20). On appeal, appellants dispute an amount of \$1,261.60; however, it is unclear how appellants computed this amount.

FACTUAL FINDINGS

1. No withholdings were remitted on appellants' behalf for the 2020 tax year. Appellants timely filed their joint 2020 California Resident Income Tax Return, reporting 2020 estimated tax payments of \$400 and a balance due of \$18,240.
2. On May 13, 2021, appellants attempted to make an e-payment through FTB's Web Pay system. The payment was dishonored in the system and was not effective.
3. On July 12, 2021, FTB issued appellants a Notice of Tax Return Change – Revised Balance (notice). The notice explained that FTB received no payment, appellants' claimed estimated tax payments were reduced to zero, and FTB imposed a late payment penalty of \$1,118.40, plus interest. The notice requested that by July 27, 2021, appellants pay their tax liability of \$19,848.69 in full to avoid additional interest and penalties.
4. On July 24, 2021, appellants paid \$19,848.69. Appellants submitted to FTB a Reasonable Cause – Individual and Fiduciary Claim for Refund form dated August 2, 2021, requesting that the late payment penalty of \$1,118.40 be refunded to them because they were unaware that their Web Pay payment was rejected by their bank.
5. On August 31, 2021, FTB issued appellants an Income Tax Due Notice for \$112.60 in penalties and interest. On September 9, 2021, appellants paid the balance due.²
6. FTB denied appellants' refund claim on March 2, 2022. This timely appeal followed.

DISCUSSION

Issue 1: Whether appellants have shown reasonable cause for the late payment of their 2020 tax liability.

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 tax. Generally, the date prescribed for the payment of tax is the due date of the return (without regard to extensions of time for filing). (R&TC, § 19001). The penalty is 5 percent of the initial underpaid tax amount plus one-half of 1 percent of the outstanding liability for each subsequent month or fraction thereof for a maximum of 40 months. (R&TC, § 19132). Here, FTB properly imposed

² Appellants made a duplicate payment of \$112.60 on July 30, 2021, which was refunded with interest on November 19, 2021. Appellants also made a May 4, 2022 payment of \$150.07, however, their 2020 tax liability had been fully satisfied. Though a March 10, 2022 2020 Tax Year Current Values Display shows a current balance of \$150.07, OTA does not know what happened to the overpayment and it is not before us in the instant appeal.

the late payment penalty because the payment due date for the 2020 tax year was May 17, 2021.³ Two months after the due date, FTB notified appellants that they had until July 27, 2021, to satisfy their 2020 tax liability. Appellants timely satisfied their 2020 tax liability on July 24, 2021. Thus, the notice properly calculated the late payment penalty of \$1,118.40.⁴

The late payment penalty may be abated where the taxpayer shows that the failure to make a timely payment was due to reasonable cause and was not due to willful neglect. (R&TC, § 19001). To establish reasonable cause for the late payment of the 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.) The taxpayer bears the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Ibid.*) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof. (*Ibid.*)

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*, 2018-OTA-075P.)

Appellants contend that it was reasonable for them to pay taxes late because they received a confirmation for their timely, but erroneous payment, which did not reflect the correct bank account number.⁵ They further allege that FTB did not notify them that their payment was dishonored, which would have allowed them to correct the mistake, and reference their good payment history. Appellants also note that while it is their responsibility to check, they were travelling at the time of payment, and did not remember to check if the payment was successful. Appellants urge that they made an honest mistake.

OTA would expect reasonably prudent taxpayers to verify the bank account information they entered into FTB's Web Pay system. Appellants acknowledged that they overlooked the

³ In response to COVID-19, FTB postponed the 2020 due dates, for individuals, for returns and payments to May 17, 2021. (See <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2021-03-state-tax-deadline-for-individuals-postponed-until-may-17-2021.html>.)

⁴ Appellants do not dispute calculation of the penalty. 5 percent of the initial underpayment amount of \$1,860.00 was \$932.00. The underpaid liability was outstanding for two months and subject to an additional 1 percent penalty of \$186.40. Thus, the late payment penalty was \$1,118.40 (\$932.00 + \$186.40).

⁵ The record does not contain a copy of the Web Pay confirmation received by appellants.

error.⁶ They further concede that it was their responsibility to monitor their bank account to ascertain whether a scheduled payment to FTB was in fact paid. (*Appeal of Scanlon, supra.*) Appellants note that they were travelling at the time but do not assert or show evidence that their bank accounts were inaccessible while travelling. They concede that they forgot to check if the payment was successful. Concerning appellants' contention that FTB did not notify them that the payment was unsuccessful, lack of notice from FTB of a failed payment does not negate appellants' duty of prudence and due care to verify that their scheduled payments were successful. (*Appeal of Scanlon, supra.*) Accordingly, OTA finds that appellants have not established reasonable cause to abate the late payment penalty.

OTA acknowledges that appellants appear to have a history of timely tax payments (with the exception noted above for 2020) and note that the IRS has a penalty abatement program called First Time Abate. For the 2020 tax year at issue, neither the California legislature nor FTB adopted a comparable penalty abatement program. While a history of timely payment may be considered for credibility and intent of the taxpayer, it does not, by itself, show reasonable cause. (*Appeal of Moren, supra.*) Appellants must establish that their failure to timely paid their taxes was due to reasonable cause, which they have not done.⁷

Issue 2: Whether appellants are entitled to interest abatement.

Interest must be assessed from the date a tax payment is due through the date that it is paid. (R&TC, § 19101.) Imposing interest is mandatory; it is not a penalty, but it is compensation for appellants' use of money after it should have been paid to the state. (*Appeal of Moy, 2019-OTA-057P.*) There is no reasonable cause exception to the imposition of interest. (*Ibid.*) Generally, to obtain relief from interest, taxpayers must qualify under R&TC section 19104, 19112, or 21012.⁸ (*Ibid.*) Appellants do not allege that any of the three statutory

⁶ Appellants mention that this error has happened to them with the IRS. Where the same type of error in electronic payment occurred in the past, OTA would expect appellants to be especially diligent regarding payment.

⁷ R&TC section 19132.5, effective for tax years beginning on or after January 1, 2022, allows an individual taxpayer to request a one-time abatement of a timeliness penalty. As the 2020 tax year is at issue here, this newly enacted provision is inapplicable.

⁸ Under R&TC section 19104, FTB is authorized to abate or refund interest if there has been an unreasonable error or delay in the performance of a ministerial or managerial act by an FTB employee. Under R&TC section 19112, FTB may waive interest for any period for which FTB determines that an individual has extreme financial hardship. OTA does not have authority to review extreme financial hardship determinations. (See *Appeal of Moy, supra.*) Under R&TC section 21012, an individual may be relieved from interest if that person reasonably relies on written advice from FTB in response to a written request.

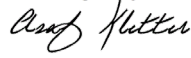
provisions for interest abatement apply to the facts of this case, and OTA concludes based on the evidence in the record that none of these statutory provisions apply. Therefore, FTB properly imposed interest and OTA has no basis to abate it.⁹

HOLDINGS

1. Appellants have not shown reasonable cause for the late payment of their 2020 tax liability.
2. Appellants are not entitled to interest abatement.

DISPOSITION

FTB’s action in denying appellants’ claim for refund is sustained, as modified by FTB’s concession on appeal of \$93.20, plus interest on the conceded portion.

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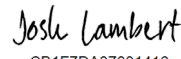
 Asaf Kletter
 Administrative Law Judge

We concur:

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 Andrew J. Kwee
 Administrative Law Judge

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 Josh Lambert
 Administrative Law Judge

Date Issued: 6/2/2023

⁹ FTB concedes \$93.20 of late payment penalty and that the associated interest will also be refunded.