

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 221011594
F. DENISTON AND)
P. DENISTON)
_____)

OPINION

Representing the Parties:

For Appellants: F. Deniston

For Respondent: AnaMarija Antic-Jezildzic, Specialist

R. TAY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, F. Deniston and P. Deniston (appellants) appeal an action by the Franchise Tax Board (respondent) denying appellants’ claim for refund of \$5,287 for the 2020 tax year.

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

ISSUES

1. Whether appellants have shown respondent erred in its proposed assessment of the late-payment penalty for the 2020 tax year.
2. Whether appellants have shown error in respondent’s proposed assessment of the estimated tax penalty for the 2020 tax year.

FACTUAL FINDINGS

1. On or around December 9, 2020, respondent received a check from appellants as an estimated tax payment for the 2020 tax year. The check contained a discrepancy in the amount of the check – in one of the amount fields the check contained “Fifty & 00/100” and in the other amount field the check contained “\$50,000.00.” Respondent credited appellants’ 2020 tax account in the amount of \$50 for the estimated payment.

2. Appellants timely filed their 2020 California income tax return, in which appellants erroneously reported a \$50,000 estimated tax payment.
3. Respondent processed the return, and subsequently issued a Notice of Tax Return Change – Revised Balance dated July 15, 2021 (Notice), indicating appellants had an outstanding balance. Respondent imposed a \$2,997.00¹ late-payment penalty and a \$2,040.00 estimated tax penalty.
4. In response to the Notice, appellants paid their outstanding balance in a series of payments from July 26, 2021, to October 17, 2021.
5. Appellants filed a claim for refund, which respondent denied in a letter dated August 5, 2022.

DISCUSSION

Issue 1: Whether appellants have shown respondent erred in its proposed assessment of the late-payment penalty for the 2020 tax year.

R&TC section 19132 imposes a late-payment penalty when a taxpayer fails to pay the amount required to be shown 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.)

Appellants admit they made “[a]n unintentional error” on the estimated tax payment check dated December 2, 2020. Although the check contained two amounts, one intended and one unintended, respondent properly deposited appellants’ check for \$50 (the unintended amount) instead of \$50,000, since the words on the check stated the amount was \$50. (See Cal. U. Com. Code, § 3114; *Nishiki v. Danko Meredith, APC* (2018) 25 Cal.App.5th 883, 892 [“If an instrument contains contradictory terms . . . words prevail over numbers.”]) Thus, appellants did not timely pay their 2020 tax liability, and OTA finds no error in respondent’s imposition of the late-payment penalty.

The late-payment penalty may be abated if a taxpayer shows 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)(1).) The failure to timely remit the balance due on a tax liability caused by an

¹ Respondent subsequently increased the late-payment penalty to \$3,246.75 to account for an additional month between the date of the Notice and the date of payment.

oversight does not, by itself, constitute reasonable cause. (*Appeal of Friedman*, 2018-OTA-077P.) To establish reasonable cause for a late payment of tax, a taxpayer must show that the failure to make a timely payment occurred despite the exercise of ordinary business care and prudence. (*Appeal of Rougeau*, 2021-OTA-335P). The taxpayer bears the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Ibid.*)

Here, appellants do not specifically make a reasonable cause argument; rather, appellants argue that the late-payment penalty “is unreasonable because it took [respondent] seven (7) months” to notify appellants of the error on their estimated tax payment check. First, there is no provision under the law that would allow for an abatement of the late-payment penalty when respondent notifies a taxpayer of a payment error regardless of the date appellants were notified. Second, appellants’ mistake in the payment process does not excuse their late payment of tax. Rather than wait for respondent to notify them of the error, appellants could have checked their bank account to confirm the proper amount had been withdrawn. Appellants’ failure to do so indicates they did not exercise ordinary business care and prudence. (See *Appeal of Friedman, supra.*) As stated in the *Appeal of Friedman, supra.*, while we sympathize with appellants’ unintentional error, these facts do not form a basis for granting relief from the penalty.

Appellants also note that they have never failed to pay their taxes. While appellants’ good faith dealing with respondent and their history of compliance is commendable, there is no legal provision that is effective for the 2020 tax year that would allow for abatement of the late-payment penalty on that basis. A recently enacted statute allows for a one-time abatement of penalties under circumstances alleged by appellants; however, that statute expressly applies to tax years beginning on or after January 1, 2022. (R&TC, § 19132.5.)

Issue 2: Whether appellants have shown error in respondent’s assessment of the estimated tax penalty for the 2020 tax year.

Internal Revenue Code (IRC) section 6654 imposes an addition to tax, which is treated and often referred to as a penalty, when an individual fails to timely pay estimated tax. (*Appeal of Johnson*, 2018-OTA-119P.) Subject to certain exceptions not relevant to the issue on appeal, R&TC section 19136 incorporates IRC section 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(a).) There is no general reasonable cause exception to the

imposition of the estimated tax penalty. (*Appeal of Johnson, supra.*) The estimated tax penalty is mandatory unless the taxpayer establishes that a statutory exception applies. (*Ibid.*)


Here, appellants make no separate argument that they qualify for an exception to the estimated tax penalty. This panel also finds no evidence in the record that an exception applies; thus, respondent’s imposition of the penalty is sustained.

HOLDINGS

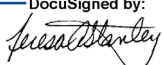
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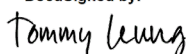
DISPOSITION

Respondent’s action is sustained in full.

DocuSigned by:

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 Richard Tay
 Administrative Law Judge

We concur:

DocuSigned by:

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 Teresa A. Stanley
 Administrative Law Judge

DocuSigned by:

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 Tommy Leung
 Administrative Law Judge

Date Issued: 6/26/2023