

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 221011681  
J. GUZMAN AND )  
C. GUZMAN )  
\_\_\_\_\_ )

**OPINION**

Representing the Parties:

For Appellants: J. Guzman  
C. Guzman

For Respondent: Josh Ricafort, Tax Counsel

L. KATAGIHARA, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. Guzman and C. Guzman (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$873.99, plus applicable interest, for the 2021 tax year.<sup>1</sup>

Appellants elected to have this appeal determined pursuant to the procedures of the Small Case Program. Those procedures require the assignment of a single administrative law judge. (Cal. Code Regs., tit. 18, § 30209.05 et seq.) Appellants waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

**ISSUES**

1. Whether appellants have established reasonable cause for failing to timely pay their tax liability.

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<sup>1</sup> Appellants’ claim for refund requested a refund of \$964.14; their appeal to the Office of Tax Appeals (OTA) requested a refund of \$966.33. FTB denied appellants’ claim for refund in its entirety but specified the amount of its denial as \$873.99 (representing the late payment penalty imposed by FTB), plus applicable interest, because FTB did not consider appellants’ self-assessed estimated tax penalty to be at issue.

2. Whether appellants have established a basis upon which the estimated tax penalty can be abated.<sup>2</sup>
3. Whether appellants have established a basis upon which interest can be abated.

#### FACTUAL FINDINGS

1. Appellants timely filed their joint California income tax return for the 2021 tax year on April 7, 2022, reflecting withholdings of \$667, estimated tax payments of \$0, a self-assessed estimated tax penalty of \$146, and a total amount due of \$13,592. FTB accepted appellants' tax return but did not receive the requisite payment from appellants by the April 15, 2022 deadline.
2. Consequently, on June 20, 2022, FTB issued a State Income Tax Balance Due Notice (Balance Due Notice) to appellants, informing appellants of their outstanding California tax liability, which included a late payment penalty, appellants' self-assessed estimated tax penalty, and applicable interest. In total, the Balance Due Notice reflected a balance of \$14,543.57, if paid by July 5, 2022.
3. On June 28, 2022, appellants paid the balance shown as due on their tax return (i.e., \$13,592.00), not the balance as shown on the Balance Due Notice (i.e., \$14,543.57).
4. Because a portion of appellants' liability remained unpaid, on August 17, 2022, FTB issued to appellants an Income Tax Due Notice showing a balance of \$964.14, if paid by September 1, 2022. In response, appellants filed a claim for refund in the amount of \$964.14 and requested abatement of the penalties and interest but did not pay the amount due.
5. On September 21, 2022, FTB issued a Final Notice Before Levy and Lien reflecting a balance of \$966.33. In response, appellants paid their outstanding balance for the 2021 tax year on September 27, 2022, and thereby perfected their claim for refund of the penalties and interest.
6. FTB denied appellants' claim for refund and this timely appeal followed.

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<sup>2</sup> Appellants self-assessed the estimated tax penalty on their 2021 California income tax return, which FTB accepted. Appellants have not specifically raised the estimated tax penalty in their appeal to OTA, but as their claim for refund requests "removal of the penalties and interest," OTA addresses the issue below.

## DISCUSSION

### Issue 1: Whether appellants have established reasonable cause for failing to timely pay their 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 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, it is undisputed that FTB did not timely receive appellants' tax payment, and therefore, the penalty was properly imposed.<sup>3</sup>

The late payment penalty may be abated if the taxpayer shows that the failure to make a timely payment of tax was due to reasonable cause and was not due to willful neglect.<sup>4</sup> (R&TC, § 19132(a)(1).) 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.*) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Scanlon*, 2018-OTA-075P.)

Here, appellants assert that they timely mailed a payment of their taxes on April 15, 2022, but their payment was lost in the mail. Appellants explain that they remitted another payment immediately after learning FTB had not received their initial payment.

However, appellants have not provided any evidence that their payment was timely mailed and subsequently lost, and unsupported assertions are not sufficient to satisfy their burden of proof. (*Appeal of Scanlon, supra.*) Moreover, ordinarily intelligent and prudent businesspersons would have checked their bank account balance to confirm that FTB timely received their payment. (See *Appeal of Friedman*, 2018-OTA-077P.) Therefore, appellants have not shown that their failure to make a timely payment of tax was due to reasonable cause.

Appellants also request that the penalty be abated on the basis that they have a history of making timely payments, but a history of timely payments is not sufficient grounds for abatement. California's one-time penalty abatement is only applicable for "taxable years

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<sup>3</sup> While appellants seek abatement of the penalty, they have not contested the calculation of the penalty amount, and OTA does not see any error in the calculation of the penalty amount.

<sup>4</sup> FTB has not asserted that appellants' failure to make a timely payment of tax was due to willful neglect.

beginning on or after January 1, 2022.” (R&TC, § 19132.5.) The statute does not apply to penalties assessed for the 2021 tax year. As previously stated, to abate the late payment penalty, appellants must establish that they had reasonable cause for the late payment. Having failed to do so, the late payment penalty cannot be abated.

Issue 2: Whether appellants have established a basis upon which the estimated tax penalty can be abated.

Except as otherwise provided, R&TC section 19136 conforms to Internal Revenue Code (IRC) section 6654 and imposes a penalty for the underpayment of estimated tax where the taxpayer’s installment tax payments are less than the amounts due at the end of the installment periods. (R&TC, § 19136(a).) There is no general reasonable cause exception to the imposition of the estimated tax penalty; the penalty is mandatory unless the taxpayer establishes that a statutory exception applies.<sup>5</sup> (*Appeal of Johnson*, 2018-OTA-119P.)

Appellants have not specifically addressed the imposition of the estimated tax penalty, which they self-assessed in their tax return. As a mandatory penalty for which there is no general reasonable cause exception, appellants have not established a basis upon which the estimated tax penalty can be abated.

Issue 3: Whether appellants have established a basis upon which interest can be abated.

Imposing interest on a tax deficiency is mandatory. (R&TC, § 19101(a).) Interest is also charged on certain penalties. (R&TC, § 19101(c)(2)(B).) Interest is not a penalty but is compensation for the taxpayer’s use of money after it should have been paid to the state, and it can only be abated in certain limited situations when authorized by law. (*Appeal of Moy*, 2019-OTA-057P.) There is no reasonable cause exception to the imposition of interest. (*Ibid.*)

To obtain interest abatement, appellants must qualify under either R&TC section 19104 or R&TC section 21012.<sup>6</sup> First, R&TC section 19104 does not apply here because appellants do not allege, and the evidence does not show, that the interest at issue is attributable, in whole or in part, to any unreasonable error or delay by an officer or employee of FTB when performing a

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<sup>5</sup> Appellants have neither argued nor provided evidence that any of the statutory exceptions apply and thus, are not discussed further.

<sup>6</sup> Pursuant to R&TC section 19112, FTB also has discretion to waive interest, but OTA does not have jurisdiction to review FTB’s exercise of such discretion. (See *Appeal of Moy*, *supra.*)

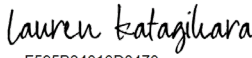
ministerial or managerial act. Second, R&TC section 21012 does not apply because appellants do not allege, and the evidence does not show, FTB provided appellants with any requested written advice. Accordingly, appellants have not established that they are entitled to interest abatement.

HOLDINGS

1. Appellants have not established reasonable cause for failing to timely pay their tax liability.
2. Appellants have not established a basis upon which the estimated tax penalty can be abated.
3. Appellants have not established a basis upon which interest can be abated.

DISPOSITION

FTB's action is sustained.

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Lauren Katagihara  
Administrative Law Judge

Date Issued: 7/26/2023