

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:

T. WANG) OTA Case No. 221212013
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)**OPINION**

Representing the Parties:

For Appellant:

T. Wang

For Respondent:

Phillip C. Kleam, Tax Counsel III

C. AKIN, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, T. Wang (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant's claim for refund of \$1,149.20, plus applicable interest, for the 2021 tax year.

Appellant 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, § 30209.1.) Appellant waived the right to an oral hearing; therefore, the Office of Tax Appeals (OTA) decides the matter based on the written record.

ISSUES

1. Whether appellant has established reasonable cause to abate the late-payment penalty.
2. Whether appellant has established a basis to abate interest.

FACTUAL FINDINGS

1. Appellant timely filed a 2021 California Resident Income Tax Return on April 6, 2022, reporting tax due of \$17,680. On the return, appellant also self-assessed an underpayment of estimated tax penalty (estimated tax penalty) of \$32, resulting in a total balance due of \$17,712 (\$17,680 + \$32).¹

¹ The estimated tax penalty is not at issue in this appeal and will not be discussed further in this Opinion.

2. Because FTB did not receive payment of the reported balance due with appellant's return, on June 15, 2022, FTB sent appellant a State Income Tax Balance Due Notice requesting payment of the \$17,712 reported balance due and imposing a late-payment penalty, and applicable interest.
3. Appellant paid the balance due reflected on the State Income Tax Balance Due Notice on June 27, 2022.
4. On August 2, 2022, FTB sent appellant an Income Tax Due Notice which increased the late-payment penalty and interest based on the date of appellant's June 27, 2022 payment.²
5. Appellant paid the remaining balance due on August 15, 2022.
6. Appellant filed a claim for refund seeking a refund of the late-payment penalty and interest based on reasonable cause.
7. FTB denied appellant's claim for refund and this timely appeal followed.
8. On appeal, appellant provides a copy of a check dated April 3, 2022, payable to FTB in the amount of \$17,680 (the reported tax due on appellant's return). Appellant also provides evidence from his bank showing that he stopped payment on this check on June 29, 2022.
9. FTB provides notes from a webchat with appellant on June 29, 2022. The notes indicate that appellant told FTB that he had mailed a check to FTB on April 3, 2022. FTB advised appellant to stop payment on the check, show proof, and submit a claim for refund.

DISCUSSION

Issue 1: Whether appellant has established reasonable cause to abate the late-payment penalty.

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.) For the 2021 tax year, the original due date of

² The Income Tax Due Notice reflects total penalties of \$1,180.20. \$1,180.20 less the \$32.00 estimated tax penalty that was self-assessed by appellant equals \$1,148.20, which is \$1.00 less than the amount reflected on FTB's Claim for Refund Denial Letter (\$1,149.20). This \$1.00 difference is not explained by the parties but does not affect the outcome of this appeal.

the return was April 15, 2022. As appellant did not remit full payment of the tax due for the 2021 tax year until June 27, 2022, FTB properly imposed the late-payment penalty.

The late-payment penalty may be abated if appellant 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).) To establish reasonable cause for a late payment of tax, appellant must show that the failure to make a timely payment occurred despite the exercise of ordinary business care and prudence. (*Appeal of Scanlon*, 2018-OTA-075P.) Appellant bears the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Appeal of Moren*, 2019-OTA-176P.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Ibid.*)

Appellant contends that he wrote a check for the payment of the \$17,680 tax due on April 3, 2022, and that he personally dropped off the original payment at the U.S. Postal Service on April 3, 2022. Appellant asserts that the missing payment is either due to the U.S. Postal Service losing the original mail or FTB misplacing the original payment in its office or payment processing center. Appellant contends that the late payment of tax for 2021 is therefore due to reasonable cause and not willful neglect. He contends that he has followed every step of FTB's instructions to him after he contacted FTB when he received the State Income Tax Balance Due notice in June 2022. Appellant notes that he paid the full balance due plus interest and penalties, requested a stop payment of the original check, and submitted a request for refund to FTB based on reasonable cause. Appellant contends that because he made the original payment to FTB well before the tax deadline, and the missing payment was due either to the U.S. Postal Service or FTB, he has established reasonable cause for the abatement of the late-payment penalty assessed by FTB.

While appellant provides a copy of a check dated April 3, 2022, payable to FTB in the amount of \$17,680,³ appellant has not provided any proof or evidence that this check was mailed to FTB on or about April 3, 2022. Appellant contends that he delivered the check to the post office on April 3, 2022, and provides what he describes as a photocopy of the "envelope used for mailing." However, the photocopy of the envelope only contains FTB's mailing address and

³ This is the amount of tax reported as due on appellant's return which was filed on April 6, 2022; however, it does not include the \$32 self-assessed estimated tax penalty appellant also reported on this return. The total reported balance due, including this penalty, was \$17,712, not \$17,680. Appellant has not explained why this check was payable for \$17,680, instead of \$17,712, the total reported balance due on the return.

appellant's return address. It does not include postage or stamps, and appellant does not provide any evidence (such as a postmark, certified or registered mail receipt, or tracking information) establishing the envelope containing the check was in fact mailed to FTB on or about April 3, 2022. Appellant's unsupported assertion regarding the mailing of a check on April 3, 2022, is insufficient to meet appellant's burden of proof. (*Appeal of Scanlon, supra.*) Thus, appellant has failed to meet his burden of showing that he exercised ordinary business care and prudence in timely remitting his tax payment for the 2021 tax year.

Additionally, OTA has previously held that it would expect reasonably prudent taxpayers exercising due care and diligence to monitor their bank account and quickly ascertain whether a scheduled payment from their account to FTB was in fact paid. (*Appeal of Scanlon, supra*; see also *Appeal of Friedman, 2018-OTA-077P* [exercising ordinary business care and prudence would entail ensuring the payment was actually submitted and the appellants failed to exercise such care when they did not check their bank account at the time of the scheduled payment or later to verify that the attempted payment was successful].) While *Appeal of Scanlon, supra*, and *Appeal of Friedman, supra*, both deal with attempted electronic payments, OTA concludes that this concept is also applicable to attempted payments by check. Where a check payment is mailed to FTB, OTA concludes that the exercise of ordinary business care and prudence requires taxpayers to monitor and review their bank account to ensure that the check is received and cashed by FTB.

Appellant contends that he was unaware that FTB had failed to receive his tax payment until he received the State Income Tax Due Notice in June 2022. However, had appellant monitored his bank account, he could have identified that FTB had failed to timely cash his April 3, 2022 check, followed up with FTB regarding the status of this payment, and remitted timely payment prior to the April 15, 2022 due date, or shortly thereafter. Appellant contends that an ordinary person would not have prior knowledge on exactly how long it would take FTB to process a check submitted through the U.S. mail and that it would not be reasonable to put such a burden on the taxpayer. While OTA acknowledges that a taxpayer would not know precisely when FTB will cash a check which has been mailed to it, OTA concludes that an ordinarily intelligent and prudent businessperson would have monitored his or her bank account and contacted FTB if his or her check payment of taxes had not been cashed within a couple of weeks of when it was mailed. Here, appellant was unaware that FTB had not received his check

payment until FTB notified appellant in mid-June 2022, more than two full months after appellant contends that he mailed the check to FTB. Again, had appellant monitored his bank account, he would have noticed that FTB had failed to cash his check, contacted FTB to follow up, and resubmitted his payment much earlier. “[A]n acceptable reason for failure to pay taxes will excuse such failure only so long as the reason remains valid.” (*Appeal of Moren, supra.*) Appellant has therefore failed to establish reasonable cause for the entire period between the April 15, 2022 due date for the payment of his taxes, and the June 27, 2022 date appellant paid the tax due for the 2021 tax year, and the late-payment penalty may not be abated.

Issue 2: Whether appellant has established a basis to abate interest.

If any amount of the tax is not paid by the due date, interest is required to be imposed from the due date until the date the taxes are paid. (R&TC, § 19101(a).) Interest is not a penalty but is compensation for the taxpayer’s use of money which should have been paid to the state. (*Appeal of Balch, 2018-OTA-159P.*) Imposition of interest is mandatory, and it can only be abated in certain limited situations when authorized by law. (R&TC, § 19101(a); *Appeal of Balch, supra.*) There is no reasonable cause exception to the imposition of interest. (*Appeal of Moy, 2019-OTA-057P.*) To obtain interest relief, appellant must qualify under R&TC section 19104, 19112 or 21012.⁴ (*Ibid.*)

Here, appellant only provides reasonable cause type arguments for the abatement of interest and has not alleged facts or substantive arguments suggesting that these statutory provisions apply. Thus, appellant has not established any basis for interest abatement for the tax year at issue.


⁴ OTA does not have jurisdiction to review FTB’s interest abatement determination under R&TC section 19112. (*Appeal of Moy, supra.*)

HOLDINGS

1. Appellant has not established reasonable cause to abate the late-payment penalty.
2. Appellant has not established a basis to abate interest.

DISPOSITION

FTB's denial of appellant's claim for refund is sustained.

DocuSigned by:

Cheryl L. Akin
Administrative Law Judge

Date Issued: 6/22/2023