

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 221212116
)
D. WHITESIDE AND)
K. NACKERUD)
)
)

OPINION

Representing the Parties:

For Appellants: D. Whiteside
K. Nackerud

For Respondent: Paige Chang, Tax Counsel

E. LAM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, D. Whiteside and K. Nackerud (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants' claim for refund of \$1,487.33, and applicable interest for the 2021 tax year.

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, § 30209.1.) 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 have established reasonable cause to abate the late-payment penalty.
2. Whether appellants have established a basis to abate interest.

FACTUAL FINDINGS

1. On March 11, 2022, appellants timely filed a California Resident Income Tax Return (Form 540) for the 2021 tax year. As relevant to this appeal, appellants reported an overpayment on their tax return after applying the \$75,000 of 2021 California estimated tax and other payments.

2. However, FTB issued to appellants a Notice of Tax Return Change – Revised Balance (Notice), which indicated that FTB received only \$50,000 in 2021 California estimated tax and other payments, not \$75,000 as reported by appellants.
3. Appellants protested the Notice. Appellants indicated that on September 7, 2021, appellants remitted a \$25,000 estimated payment via FTB Web Pay. Appellants state that they did not understand the reason the payment was disallowed by the bank. Appellants produced a Vanguard bank statement indicating that the bank account had sufficient funds to pay the \$25,000 on September 7, 2021. Also on September 7, 2021, appellants received an automatic Confirmation Web Pay Scheduled email, which included a disclaimer that stated, “[t]o confirm your payment has been cleared, review your bank account statement or contact your bank.”
4. Appellants’ estimated payments made in June 2021 and December 2021 were successfully withdrawn from their bank account and paid to FTB via FTB Web Pay.
5. FTB denied appellants’ claim for refund and this timely appeal followed.

DISCUSSION

Issue 1: Whether appellants have established reasonable cause to abate the late-payment penalty.

R&TC section 19132(a)(1)(A) imposes a late-payment penalty when taxpayers fail to pay the amount shown as due on the return by the date prescribed for payment of that tax. The late-payment penalty does not apply when the failure to pay is due to reasonable cause and not due to willful neglect. The taxpayers bear the burden of proving “reasonable cause,” which means the taxpayers must show that their failure to pay the tax in a timely manner occurred despite the exercise of ordinary business care and prudence. (*Appeal of Moren*, 2019-OTA-176P.)

Appellants do not contest whether the late-payment penalty was properly computed. The only issue is whether reasonable cause exists to abate the late-payment penalty. Here, appellants assert that they reasonably assumed that their payment was processed because: (1) FTB’s Confirmation Web Pay Scheduled email was sent to appellants; (2) the bank account had sufficient funds to pay the September 7, 2021 payment in the amount of \$25,000; (3) appellants were never notified of an incomplete payment; and (4) appellants’ estimated payments were successfully made for other periods (e.g., in June 2021 and December 2021) through FTB’s Web Pay.

However, appellants' assertions do not demonstrate reasonable cause for the late-payment of tax. Here, appellants failed to show that they exercised ordinary business care and prudence. FTB's Confirmation Web Pay Scheduled email informed appellants that they needed to review their bank account statement or contact their bank to confirm that a payment was made and cleared to FTB. Appellants have not shown that they took steps to confirm that the electronic payments were successfully withdrawn from their bank account and paid to FTB, before FTB sent appellants the Notice assessing the late-payment penalty. As such, appellants' argument cannot be used as a basis for abatement of the California late-payment penalty at issue here. (See *Appeal of Scanlon*, 2018-OTA-075P.) Based on the foregoing reasons, appellants have failed to show reasonable cause to abate the late-payment penalty.

Issue 2: Whether appellants have established a basis to abate interest.

Imposing interest on a tax deficiency is mandatory. (R&TC, § 19101(a).) Interest is not a penalty imposed on the taxpayer; it is compensation for the taxpayer's 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, and it can only be abated or waived in certain limited situations when authorized by law. (*Ibid.*) To obtain relief from interest, taxpayers must qualify under the waiver provisions of R&TC sections 19104, 19112, or 21012. (*Appeal of Balch*, 2018-OTA-159P.)

Here, appellants assert the same grounds for reasonable cause for the failure to timely pay their 2021 tax liability as discussed above. Furthermore, appellants do not allege that any of the three statutory provisions for interest abatement apply to the facts of this case; and based on the evidence in the record, OTA concludes that none of these statutory provisions apply. Therefore, appellants have not demonstrated any grounds for interest abatement.

HOLDINGS

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

DISPOSITION

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

DocuSigned by:
Eddy Y.H. Lam
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Eddy Y.H. Lam
Administrative Law Judge

Date Issued: 8/1/2023