

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
Q. WONG AND) OTA Case No. 221111774
K. WONG)
_____)

OPINION

Representing the Parties:

For Appellants: Q. Wong and K. Wong

For Respondent: Paige Chang, Attorney

For Office of Tax Appeals: Amber Poon, Graduate Legal Assistant

A. KLETTER, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Q. Wong and K. Wong (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$1,164.80 plus interest for the 2021 tax year.

Appellants waived the 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 to abate the late payment penalty.
- 2. Whether appellants are entitled to interest abatement.

FACTUAL FINDINGS

- 1. On or around April 19, 2022, appellants attempted to make an electronic funds transfer (EFT) of \$18,208 through FTB’s Web Pay portal for the 2021 tax year. Appellants inadvertently selected their business bank account for the EFT.
- 2. On June 15, 2022, appellants called FTB regarding the attempted payment request. FTB advised appellants that no payment was received. On the same day, June 15, 2022, appellants contacted their bank to inquire about the attempted EFT.

3. On June 21, 2022, appellants filed their joint 2021 California Resident Income Tax Return reporting tax due of \$17,120.¹
4. FTB subsequently issued appellants a Notice of Tax Return Change – Revised Balance, which as relevant here, imposed a late payment penalty and interest.
5. Appellants subsequently paid their liability and filed a claim for refund for the late payment penalty based on reasonable cause. Appellants attached a June 21, 2022 letter from their bank, which explains that the bank rejected two transactions on April 21, 2022, and April 28, 2022, respectively, because appellants’ business bank account does not allow third-party withdrawals.
6. FTB denied appellants’ claim for refund. This timely appeal followed.

DISCUSSION

Issue 1: Whether appellants have shown 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.) Here, it is undisputed that appellants failed to timely pay their tax liability and that FTB properly imposed the penalty.

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. (R&TC, § 19132(a)(1).) To establish reasonable cause for the 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 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.*)

Here, appellants acknowledge that they inadvertently selected their business bank account for the attempted EFT when that account did not allow third-party withdrawals. OTA would expect an ordinarily intelligent and prudent businessperson to verify the bank account information entered into FTB’s Web Pay portal, including verifying that the account is a valid

¹ With their return, appellants also paid an underpayment of estimated tax penalty. As this penalty is not at issue in this appeal, it will not be discussed further.

payment source. Appellants assert that they were unaware that their banking institution no longer allowed third-party withdrawals. However, taxpayers have the responsibility to 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 have not shown what steps they took to quickly ascertain that their scheduled electronic payment to FTB was successful. 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. (*Ibid.*)

Appellants assert that they attempted payment on April 19, 2022, and provided a letter from their bank which confirms its rejection of two payments, on April 21, 2022, and on April 28, 2022. However, appellants did not confirm that their payments were unsuccessful until June 15, 2022, over a month and a half later. While OTA sympathizes with appellants' inadvertent error in selecting their business bank account, appellants' circumstances do not support a finding of reasonable cause for the late payment of their 2021 taxes. Therefore, no basis exists to abate the late payment penalty.

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; it is compensation for the use of money. (*Appeal of Moy*, 2019-OTA-057P.) Generally, to obtain relief from interest, taxpayers must qualify under R&TC section 19104, 19112, or 21012.² (*Ibid.*)

Appellants do not allege that any of the three statutory 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.

² 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 FTB's written advice in response to a written request.

HOLDINGS

1. Appellants have not shown reasonable cause to abate the late payment penalty.
2. Appellants are not entitled to interest abatement.

DISPOSITION

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

DocuSigned by:

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 Asaf Kletter
 Administrative Law Judge

We concur:

DocuSigned by:

 F595B34010D8470

 Lauren Katagihara
 Administrative Law Judge

DocuSigned by:

 88E35E2A835348D

 Ovsep Akopchikyan
 Administrative Law Judge

Date Issued: 9/14/2023