

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:

M. BALA AND
F. BALA

) OTA Case No. 221111778
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OPINION

Representing the Parties:

For Appellants: M. Bala and F. Bala

For Respondent: Christopher M. Cook, Attorney

A. KLETTER, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. Bala and F. Bala (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$63,268.70 plus interest for the 2020 tax year.

Appellants waived the right to an oral hearing; therefore, OTA decides this matter based on the written record.

ISSUES

1. Whether appellants have shown reasonable cause for the late payment of their 2020 tax liability.
2. Whether appellants are entitled to interest abatement.

FACTUAL FINDINGS

1. No withholdings were remitted on appellants’ behalf for the 2020 tax year. Appellants made a \$1,100,000 payment for the 2020 tax year account on May 18, 2021.

2. On October 15, 2021, appellants filed their joint 2020 California Resident Income Tax Return, reporting the May 18, 2021 payment and tax due of \$36,916. On the same day, October 15, 2021, appellants paid the tax due.¹
3. FTB accepted appellants' return as filed. FTB subsequently issued appellants a State Income Tax Balance Due Notice (notice), which, as relevant here, explained that FTB had imposed a late payment penalty and interest.
4. Appellants paid the late payment penalty and interest. Appellants subsequently filed a claim for refund dated April 28, 2022, asserting that they had reasonable cause for the late payment of their 2020 tax liability.
5. On August 16, 2022, FTB denied the refund claim. This timely appeal followed.

DISCUSSION

Issue 1: Whether appellants have shown reasonable cause for the late payment of their 2020 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 tax. Generally, the date prescribed for the payment of tax is the due date of the return (without regard to extensions of time for filing). (R&TC, § 19001). The penalty is 5 percent of the initial underpaid tax amount plus one-half of 1 percent of the outstanding liability for each subsequent month or fraction thereof for a maximum of 40 months. (R&TC, § 19132). Here, FTB properly imposed the late payment penalty because the payment due date for the 2020 tax year was May 17, 2021.² Appellants untimely satisfied their 2020 tax liability on October 15, 2021, five months after the due date. Thus, FTB properly calculated the late payment penalty of \$63,268.70 in the notice.³

The late payment penalty may be abated where the taxpayer shows that the failure to

¹ Appellants' payment included an underpayment of estimated tax penalty, which is not at issue in this appeal. Accordingly, the underpayment of estimated tax penalty is not discussed further.

² In response to COVID-19, FTB postponed the 2020 due dates, for individuals, for returns and payments to May 17, 2021. (See <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2021-03-state-tax-deadline-for-individuals-postponed-until-may-17-2021.html>.)

³ Appellants do not dispute calculation of the late payment penalty. Appellants made no payments prior to the due date. 5 percent of the initial underpayment amount was \$56,845.80. The underpaid liability for the fraction of one month was \$5,648.58. Following appellants' May 18, 2021 payment, appellants remained underpaid by \$36,916.00, which they paid four months later, on October 15, 2021. Appellants were therefore subject to an additional 2 percent penalty of \$738.32 (0.5 percent x 4.00 x \$36,916.00). Thus, the late payment penalty was \$63,268.70 (\$56,845.80 + \$5,684.58 + \$738.32).

make a timely payment 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 the tax, a taxpayer must show that the failure to make a timely payment of the proper amount of tax 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.*) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof. (*Ibid.*)

Appellants assert that they have reasonable cause for the late payment because they were travelling on an unexpected trip due to circumstances beyond their control, but their banking information remained at home. Appellants allege that they were therefore unable to timely make the required payment. Appellants made the payment upon their return on May 18, 2021. However, appellants have not explained the nature of their trip. Appellant have not established what efforts, if any, they made to timely pay their tax liability, including attempts to make or schedule payment in advance of their trip. Appellants have also failed to establish that they were prevented from making the payment due to the unforeseen circumstances of travelling with their banking information at home. Thus, appellants have not established that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. Further, appellants have not explained why they paid the remaining tax due on October 15, 2021, four months after the May 17, 2021 payment due date. Therefore, appellants have not established reasonable cause to excuse their late payment of the tax due.

Appellants also assert that they made a one-time error and that the amount of the late payment penalty is overly punitive. However, while the IRS has a penalty abatement program called First Time Abate, neither the California legislature nor FTB adopted a comparable penalty abatement program for the 2020 tax year at issue.⁴ Further, OTA's function in the appeals process is to determine the correct amount of the taxpayer's California income tax liability. (*Appeal of Robinson*, 2018-OTA-059P.) Therefore, based upon the record and OTA's earlier conclusion that the late filing penalty was properly imposed, OTA has no legal basis upon which it can make any adjustments to the amount of the late payment penalty.

⁴ R&TC section 19132.5, effective for tax years beginning on or after January 1, 2022, allows an individual taxpayer to request a one-time abatement of a timeliness penalty. This newly enacted provision is inapplicable to the 2020 tax year at issue here.

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, but it is compensation for appellants' use of money after it should have been paid to the state. (*Appeal of Moy*, 2019-OTA-057P.) Generally, to obtain relief from interest, taxpayers must qualify under R&TC section 19104 or 2012.⁵ (*Ibid.*) Appellants do not allege that either statutory provision for interest abatement applies to the facts of this case, and OTA concludes based on the written record that none of these statutory provisions apply. Therefore, FTB properly imposed interest and OTA has no basis to abate it.

HOLDINGS

1. Appellants have not shown reasonable cause for the late payment of their 2020 tax liability.
2. Appellants are not entitled to interest abatement.

DISPOSITION

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

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 Asaf Kletter
 Administrative Law Judge

We concur:

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 Veronica I. Long
 Administrative Law Judge

DocuSigned by:

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 Amanda Vassigh
 Administrative Law Judge

Date Issued: 9/15/2023

⁵ 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 21012, an individual may be relieved from interest if that person reasonably relies on FTB's written advice in response to a written request.