

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 220710952
H. LEE AND)
C. LIAO)
 _____)

OPINION

Representing the Parties:

For Appellants: H. Lee
 For Respondent: Paige Chang, Attorney
 Cynthia D. Kent, Attorney

H. LE, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, H. Lee and C. Liao (appellants) appeal an action by the Franchise Tax Board (respondent) denying appellants' claim for refund of \$794.31 for the 2020 tax year.¹

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.)

The Office of Tax Appeals (OTA) Administrative Law Judge Huy "Mike" Le held a virtual hearing for this matter on August 18, 2023. At the conclusion of the hearing, OTA closed the record and submitted this matter for an opinion.

ISSUES

1. Whether appellants have established reasonable cause to abate the late-payment penalty.
2. Whether appellants have established a basis to abate the estimated tax penalty.

FACTUAL FINDINGS

1. Appellants filed a timely tax return for the 2020 tax year listing a tax due of \$11,945.

¹ Appellants' refund claim states an amount of \$794.31, while respondent's claim denial states an amount of \$935.43 that is the sum of the late-payment penalty and the estimated tax penalty.

2. On May 15, 2021, appellants scheduled a web pay payment in the amount of \$11,945 for the payment date of May 17, 2021. Appellants received a confirmation email that the web pay had been scheduled.
3. Respondent could not process appellants' payment due to invalid banking information.
4. On July 19, 2021, respondent issued appellants a Notice of Tax Return Change – Revised Balance. The notice shows a revised balance due of \$12,946.05, a late-payment penalty of \$776.43, and an estimated tax penalty of \$159.00.
5. On August 3, 2021, appellants made a payment of \$12,169.62, and on September 14, 2021, appellants made another payment of \$794.31.
6. Then, appellants filed a claim for refund based on reasonable cause.
7. Respondent denied appellants' claim for refund. This timely appeal followed.

DISCUSSION

Issue 1: Whether appellants have 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 2020 taxable year, respondent postponed the filing and payment due date to May 17, 2021.² Here, although appellants scheduled a payment on May 15, 2021, for a payment date of May 17, 2021, appellants did not successfully remit payment until August 3, 2021; therefore, respondent properly imposed the late-payment 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).) There are no allegations of willful neglect in this appeal. Thus, OTA's sole focus here is on reasonable cause.

To establish reasonable cause for a late payment of tax, taxpayers 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 Scanlon*, 2018-OTA-075P.) Taxpayers bear the

² See <https://www.ftb.ca.gov/about-ftb/newsroom/2020-tax-year-extension-to-file-and-pay-individual.html>.

burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. “The failure to timely remit the balance due on a tax liability caused by an oversight does not, by itself, constitute reasonable cause.” (*Appeal of Friedman*, 2018-OTA-077P.) The applicable standard of proof is by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(b).)

Here, appellants contend that they established reasonable cause because they attempted to make a timely payment and received a confirmation email. However, appellants did not monitor their bank account. Reasonably prudent taxpayers exercising due care and diligence would monitor their bank account and quickly ascertain whether a scheduled electronic payment from their account to respondent was in fact paid. (*Appeal of Scanlon, supra.*) In addition, as appellants state that they had previously had a similar payment issue with another government agency, they had all the more reason to confirm that the payment was actually made.

Appellants also contend that respondent did not timely notify them that the payment was unsuccessful. But a lack of notice from respondent of a failed payment does not negate appellants’ duty of prudence and due care to verify that their scheduled payments were successful. (*Appeal of Scanlon, supra.*) Appellants further reference their good payment history. However, although the IRS administers a program called “First Time Abate” under which the IRS may administratively abate the late-payment penalty if taxpayers have timely filed returns and paid taxes due for the past three years, neither the California Legislature nor respondent has adopted a comparable penalty abatement program affecting the 2020 tax year.³

Accordingly, appellants have not established reasonable cause to abate the late-payment penalty.

Issue 2: Whether appellants have established a basis to abate the estimated tax penalty.

As relevant here, California conforms to Internal Revenue Code (IRC) section 6654 and imposes an estimated tax penalty for the failure to timely make estimated income tax payments. (R&TC, § 19136(a); IRC, § 6654.) The estimated tax penalty is similar to an interest charge and applies from the due date of the estimated tax payment until the date it is paid. (IRC, § 6654(b)(2).)

³ R&TC section 19132.5 allows for the abatement of an individual’s first-time timeliness penalties. However, that section only applies to tax years beginning on or after January 1, 2022. (R&TC, § 19132.5(a)(1), (f).)

Appellants appear to argue that the estimated tax penalty should be abated based on reasonable cause, as described above. However, there is no reasonable cause abatement of an estimated tax penalty.⁴ (*Appeal of Scanlon, supra.*) Therefore, appellants have not established a basis to abate the estimated tax penalty.

HOLDINGS

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

DISPOSITION

Respondent's action denying appellants' claim for refund is sustained.

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Huy "Mike" Le
Administrative Law Judge

Date Issued: 10/4/2023

⁴ Although there is no provision allowing for the abatement of the estimated tax penalty based solely on reasonable cause, IRC section 6654(e)(3) provides that respondent may waive the addition to tax if it determines either that (1) "by reason of casualty, disaster, or other unusual circumstances the imposition of such addition to tax would be against equity and good conscience," or (2) that the failure to timely pay the estimated tax payment was due to reasonable cause, and the taxpayer retired after reaching age 62 or became disabled in the taxable year for which the estimated payments were required to be made or in the previous year. Appellants have not alleged either of these exceptions exist; therefore, OTA does not discuss them further.