

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of: )  
J. DEVARGAS AND ) OTA Case No. 230312786  
L. SCHAEFER )  
\_\_\_\_\_ )

**OPINION**

Representing the Parties:

For Appellants: J. Devargas and L. Schaefer

For Respondent: Josh Ricafort, Attorney

A. KLETTER, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. Devargas and L. Schaefer (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$937.09 for the 2021 tax year.

Appellants waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

**ISSUES**

1. Whether appellants have established reasonable cause for the late payment of their 2021 tax liability.
2. Whether appellants are entitled to interest abatement.

**FACTUAL FINDINGS**

1. Appellants timely filed their joint 2021 California Resident Income Tax Return (return), which reported tax due of \$14,711. On May 25, 2022, appellants paid the tax due.
2. FTB accepted appellants’ return as filed. FTB subsequently issued appellants a Notice of Tax Return Change – Revised Balance (notice), which explained that FTB had imposed a late payment penalty of \$882.66 and interest of \$54.43, totaling \$937.09.

3. Appellants paid the late payment penalty and interest. Appellants subsequently filed a claim for refund of \$937.09, asserting that they had reasonable cause for late payment of their 2021 tax liability.
4. On February 8, 2023, FTB denied appellants' refund claim. This timely appeal followed.
5. On appeal, appellants provide a screenshot of an April 15, 2022 payment to the IRS.

### DISCUSSION

#### Issue 1: Whether appellants have shown reasonable cause for the late payment of their 2021 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 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 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 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.*) Willful neglect is a conscious, intentional failure or reckless indifference. (*Appeal of Triple Crown Baseball LLC*, 2019-OTA-025P.)

Here, FTB properly proposed the late payment penalty because the payment due date was April 15, 2022, and appellants did not satisfy their 2021 tax liability until one month later, on May 25, 2022. Appellants do not assert that the late filing penalty was imposed or calculated in error. Rather, appellants assert that they erroneously submitted payment for both their federal and California tax liability to the IRS. They assert that the delay in satisfying their 2021 tax liability was because the IRS notified them of the overpayment weeks later. However, appellants have not provided their 2021 federal return to establish the amount of their 2021 federal tax

liability, nor have they provided a copy of the asserted IRS notice of overpayment. Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof. (*Appeal of Moren, supra.*)<sup>1</sup>

Further, the failure to timely remit the balance due caused by an oversight does not, by itself, constitute reasonable cause. (*Appeal of Friedman, 2018-OTA-077P.*) An ordinarily prudent businessperson would have verified the payment amount and method prior to making the payment. Appellants' return lists FTB's website and its mailing address for payment, but appellants used another method to make their payment, possibly the IRS's website.<sup>2</sup> Appellants did not act with ordinary business prudence when they used an unapproved method of payment. Appellants also assert that their delay in making payment was due to the IRS's belated notification; however, appellants fail to show that they acted with ordinary business care to confirm that their payment were timely received by FTB.

Appellants claim that their late payment was a first-time error. 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 2021 tax year at issue.<sup>3</sup>

While there is no evidence of willful neglect in this appeal, appellants have not established reasonable cause for the failure to timely pay their 2021 tax liability.

#### 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(a).) 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.<sup>4</sup> (*Ibid.*) Appellants do not specifically address interest.

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<sup>1</sup>Appellants include a screenshot to support their payment to the IRS, which they assert included the payment for their 2021 California tax liability. However, the screenshot only shows that a payment to the IRS was made; it does not establish appellants' federal tax liability or that a payment in excess the liability was made. Further, the screenshot is cropped, and all website information is removed. Therefore, this panel is unable to determine the source of the screenshot.

<sup>2</sup> The screenshot includes the words "IRS USATAXPYMT" and "WEB," however, it is unclear what method appellants used to make payment.

<sup>3</sup> 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 2021 tax year at issue here.

<sup>4</sup> Under R&TC section 19112, FTB may waive interest for any period for which FTB determines that an individual or fiduciary is unable to pay interest due to extreme financial hardship. OTA does not have authority to review FTB's denial of a request to waive interest under R&TC section 19112. (*Appeal of Moy, supra.*)

Appellants do not allege, and the evidence does not show, that either statutory provision for interest abatement applies to the facts of this case. R&TC section 19104 does not apply here because appellants do not allege, and the evidence does not show, that the interest is attributable, in whole or in part, to any unreasonable error or delay by an FTB employee. R&TC section 21012 does not apply because FTB did not provide appellants with any requested written advice. Therefore, FTB properly imposed interest and OTA has no basis to abate it.

HOLDINGS

1. Appellants have not established reasonable cause for the late payment of their 2021 tax liability.
2. Appellants are not entitled to interest abatement.

DISPOSITION

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

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 Asaf Kletter  
 Administrative Law Judge

We concur:

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 Cheryl L. Akin  
 Administrative Law Judge

DocuSigned by:  
  
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 Josh Aldrich  
 Administrative Law Judge

Date Issued: 10/11/2023