

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
E. TAYLOR

) OTA Case No. 221111954
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OPINION

Representing the Parties:

For Appellant: E. Taylor

For Respondent: Paige Chang, Attorney

N. RALSTON, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, E. Taylor (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$907.35 for the 2022 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.)

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

ISSUES

1. Whether appellant has established reasonable cause to abate the dishonored payment penalty.
2. Whether appellant has established a basis to abate interest.

FACTUAL FINDINGS

1. Appellant made an estimated payment via check for the 2022 tax year. The payment was dishonored due to insufficient funds. As a result of the dishonored payment, respondent assessed a dishonored payment penalty in the amount of \$907.35 plus interest.

2. Subsequently, appellant made the estimated payment, including the dishonored payment penalty of \$907.35.
3. Appellant subsequently filed a claim for refund of the dishonored payment penalty asserting reasonable cause.
4. Respondent issued a Claim for Refund Denied (Denial), dated November 14, 2022, to appellant denying the claim for refund. The Denial states, “California is authorized to waive most penalties due to reasonable cause. However, the information you provided in your letter does not constitute reasonable cause for waiving the following penalties: “There is no reasonable cause exception to the abatement of interest.”
5. This timely appeal followed.

DISCUSSION

Issue 1: Whether appellant has established reasonable cause to abate the dishonored payment penalty.

Where respondent disallows any claim for refund, it shall notify the taxpayer accordingly and provide an explanation for the disallowance. (R&TC, § 19323(a).) The taxpayer has the burden of proof to show that a claim for refund should be granted. (*Appeal of Cornerstone Compounding Pharmacy, Inc.*, 2021-OTA-196P.)

Internal Revenue Code (IRC) section 6657 which provides that whenever “any instrument in payment [of a tax liability] . . . is not duly paid, in addition to any other penalties provided by law, there shall be paid as a penalty by the person who tendered such instrument” This penalty is often referred to as the “dishonored payment penalty.” IRC section 6657 states that the dishonored payment penalty “shall not apply if the person tendered such instrument in good faith and with reasonable cause to believe that it would be duly paid.” The federal penalty is incorporated into California law by R&TC section 19134, which specifically states that it is also applicable to payments made by credit card or electronic funds transfer. (R&TC, § 19134(b).)

As with other penalties containing a “reasonable cause” exception, the taxpayer bears the burden of proving the existence of reasonable cause. (*See Appeal of Xie*, 2018-OTA-076P.) The taxpayer must provide credible and competent evidence to support the claim of reasonable cause; otherwise, the penalty cannot be abated. (*Ibid.*) The taxpayer must show that an ordinarily

intelligent and prudent businessperson would have acted similarly under the circumstances. (*Appeal of Friedman*, 2018-OTA-077P.) In the context of a dishonored payment penalty, the taxpayer must prove that he or she “tendered [the dishonored] instrument in good faith and with reasonable cause to believe that it would be duly paid.” (IRC, § 6657.)

Appellant first argues that respondent’s denial of appellant’s claim for refund is erroneous because the Denial failed to provide an explanation for the disallowance as required by R&TC section 19323(a). Appellant contends that because respondent’s Denial refers to the abatement of interest rather than the dishonored payment penalty, it does not comply with R&TC section 19323(a). Thus, appellant contends that respondent’s denial is erroneous and thus should be disregarded and the claim for refund should be granted.

OTA notes that respondent’s Denial failed to adequately identify the proper penalty. However, R&TC section 19323 does not provide a remedy for respondent’s failure to comply. While appellant asserts that the proper remedy is to grant her claim for refund, there is no basis in the law for appellant’s position. Rather, when respondent fails to properly deny a claim for refund, the remedy established under the Revenue and Tax Code is to deem appellant’s claim denied six months after the claim is filed and allow appellant to appeal the denial of the claim for refund. (R&TC, § 19331.) As appellant has filed an appeal with OTA, appellant has availed herself of the available remedy under California law. Furthermore, OTA cannot compel respondent to abate a penalty, or review respondent’s failure to abate a penalty, without explicit statutory authority. (See *Appeal of Moy*, 2019-OTA-057P [holding that OTA cannot review a purely discretionary act without a meaningful standard against which to judge the agency’s exercise of that discretion].) OTA can only analyze whether the dishonored payment penalty can be abated under the limited circumstance described IRC section 6657.

Appellant further argues that she has established reasonable cause to abate the penalty because she had planned to transfer sufficient funds from her savings account to her checking account to cover her estimated tax payments drawn on her checking account. Appellant states that she had deactivated the overdraft protection feature between her savings and checking accounts. Appellant asserts that the visit to the bank turned out to be a grueling visit because appellant had to wear a Covid mask for over an hour, most of which was spent standing. As a result, appellant was tired, annoyed, and distracted and left the bank without transferring the funds although she erroneously believed that she had in fact transferred sufficient funds.

Appellant further asserts that, once she realized her overdraft error, she contacted respondent on two occasions but was told that she did not owe respondent.

Here, appellant took affirmative action to deactivate the overdraft protection feature between her savings and checking accounts. While appellant undoubtedly had a difficult experience at the bank, nevertheless, prior to tending payment, appellant should have verified that she had sufficient funds in her checking account to make the payment prior to writing the check. While appellant asserts that she had sufficient funds in her savings account to cover the payment, the relevant account is her checking account upon which the check was drawn. A taxpayer error attributable to an oversight, even an innocent oversight, generally will not constitute reasonable cause for penalty abatement purposes. (See generally *Appeal of Friedman, supra*; *Appeal of Risser* (84-SBE-044) 1984 WL 16123.) Under these circumstances, OTA cannot conclude that appellant exercised ordinary business care and prudence which would satisfy the reasonable cause standard. Accordingly, OTA finds that the dishonored check penalty may not be abated.

Issue 2: Whether appellant has established a basis to abate interest.

Interest must be assessed from the date a tax payment is due through the date that it is paid. (R&TC, § 19101.) Imposition of interest is mandatory; it is not a penalty but rather, is compensation for appellant's use of money after it should have been paid to the state. (*Appeal of Moy, supra*.) Interest can only be abated in certain limited situations when authorized by law. (*Appeal of Balch*, 2018-OTA-159P.) To obtain relief from interest, appellant must qualify under R&TC section 19104, 19112, or 21012; however, based on the evidence and arguments provided in this matter, none of these statutory provisions apply.¹

Here, appellant only provides reasonable cause type arguments for the abatement of interest and has not alleged facts or substantive arguments suggesting that these statutory provisions apply. There is no reasonable cause exception to the imposition of interest.

¹ Pursuant to R&TC section 19104, respondent 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 employee of respondent. Here, appellant does not assert any such errors or delays occurred. Further, relief pursuant to R&TC section 21012 is not relevant here because respondent did not provide appellant with any written advice. Relief pursuant to R&TC section 19112 is not relevant here because appellant does not allege extreme financial hardship caused by significant disability or other catastrophic circumstance, which OTA does not have authority to review. (See *Appeal of Moy, supra*.)

(Appeal of Summit Hosting, LLC, supra.) Thus, OTA finds that appellant has not established any basis for abatement of interest.

HOLDINGS

1. Appellant has not established reasonable cause to abate the dishonored payment penalty.
2. Appellant has not established a basis to abate interest.

DISPOSITION

Respondent’s denial of appellant’s claim for refund is sustained.

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Natasha Ralston
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Natasha Ralston
Administrative Law Judge

Date Issued: 11/9/2023