

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:

I. MOSHE

) OTA Case No. 230312700
)
)
)
)
)

OPINION

Representing the Parties:

For Appellant:

I. Moshe

For Respondent:

AnaMarija Antic-Jezildzic, Specialist

N. RALSTON, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, I. Moshe (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$2,168.78¹ for the 2020 tax year.

Appellant waived the right to an oral hearing; therefore, the Office of Tax Appeals (OTA) decides the matter based on the written record.

ISSUES

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

FACTUAL FINDINGS

1. Appellant filed a married filing joint 2020 California return on September 15, 2021, showing a balance due of \$19,854.²
2. Respondent imposed a late payment penalty of \$1,757.21, plus interest because the tax liability was not paid within the COVID-19 extended due date of May 17, 2021.
3. Appellant made a partial payment, and respondent wrote off the remaining \$2.40.

¹ This amount consists of a late payment penalty of \$1,757.21, interest of \$413.97, less a write-off of \$2.40.

² Appellant a joint tax return with spouse, H. Yehiav; however, the appeal was signed by appellant only.

4. On February 4, 2022, appellant filed a claim for refund requesting abatement of the penalties and interest.
5. Respondent denied appellant's claim for refund, and this timely appeal followed.

DISCUSSION

Issue 1: Whether appellant has 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. 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 a 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 Scanlon*, 2018-OTA-075P). The taxpayer bears the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Appeal of Triple Crown Baseball LLC*, 2019-OTA-025P.) As to appellant's burden, the applicable standard of proof is by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(a).) To meet this evidentiary standard, a party must establish by documentation or other evidence that the circumstances it asserts are more likely than not to be correct. (*Appeal of Rougeau*, 2021-OTA-335P.) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof. (*Appeal of Porreca*, 2018-OTA-095P).

Appellant does not dispute the imposition or calculation of the penalty, but rather, appellant requests a waiver of the penalty and interest because appellant's family suffered economic hardships in 2020. A failure to pay will be considered due to reasonable cause if the taxpayer makes a satisfactory showing that he or she exercised ordinary business care and prudence in providing for the payment of the tax liability and was nevertheless either unable to pay the tax or would suffer undue hardship if it was paid on the due date. (*Appeal of Friedman*, 2018-OTA-077P.)

While appellant undoubtedly faced difficulties during the COVID-19 pandemic, appellant bears the burden of proof. Here, appellant has failed to provide any evidence to support his assertions that he was unable to timely pay the tax. Without such evidence, OTA is unable to determine that appellant's failure to timely pay the tax was due to reasonable cause.

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 a taxpayer's use of money after it should have been paid to the state. (*Appeal of Moy*, 2019-OTA-057P.) Interest can only be abated in certain limited situations when authorized by law. (*Appeal of Balch*, 2018-OTA-159P.) There is no reasonable cause exception to the imposition of interest. (*Appeal of Summit Hosting LLC*, 2021-OTA-216P.) 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.³

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. Thus, OTA finds that appellant has not established any basis for abatement of interest for the tax year at issue.

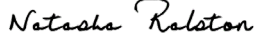
³ Pursuant to R&TC section 19104, respondent is authorized to abate or refund interest if there has been an unreasonable error or delay in the performance of a ministerial or managerial act by an employee of respondent. Here, appellant does not assert any such errors or delays occurred. Further, relief 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*.)

HOLDINGS

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

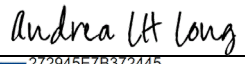
DISPOSITION

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

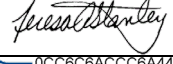
DocuSigned by:


25F8FE08EF56478...
 Natasha Ralston
 Administrative Law Judge

We concur:

DocuSigned by:


272945E7B372445...
 Andrea L.H. Long
 Administrative Law Judge

DocuSigned by:


0CC6C6ACCC6A44D...
 Teresa A. Stanley
 Administrative Law Judge

Date Issued: 11/7/2023