

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 230613469
A. MARTINEZ AND)
M. MARTINEZ)
_____)

OPINION

Representing the Parties:

For Appellants: A. Martinez
For Respondent: Joel M. Smith, Attorney

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, A. Martinez and M. Martinez (appellants) appeal an action by the Franchise Tax Board (respondent) denying appellants’ claim for refund of \$1,426.17¹ for the 2021 taxable 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, § 30209.05.) Appellants waived their right to an oral hearing; therefore, this matter is being decided based on the written record.

ISSUES

1. Whether the late payment penalty should be abated.
2. Whether interest should be abated.
3. Whether the collection cost recovery fee was correctly imposed.

¹ This amount consists of a late payment penalty of \$949.28, interest of \$160.89, and a collection cost recovery fee of \$316.

FACTUAL FINDINGS

1. Based upon a letter dated August 26, 2022, from their tax preparer, appellants paid their 2021 California personal income taxes on August 30, 2022.²
2. Consequently, respondent imposed a late payment penalty, interest, and collection cost recovery fee, which appellants paid after respondent sent them a Final Notice Before Levy and Lien informing them that a collection cost recovery fee might be imposed.
3. Appellants subsequently filed a refund claim for the penalty, interest, and fee, which respondent denied.

DISCUSSION

Issue 1: Whether the late payment penalty should be abated.

The late payment penalty may be abated where the failure to make a timely payment was due to reasonable cause and not willful neglect. (R&TC, § 19132(a)(1).) To establish reasonable cause, the taxpayer must show that the failure to timely pay occurred despite the exercise of ordinary business care and prudence. (*Appeal of Scanlon*, 2018-OTA-075P.) Unsupported assertions are insufficient to meet this burden. (*Ibid.*)

Here, appellants assert that they relied on their tax return preparer regarding when they were required to pay their taxes. However, the exercise of ordinary business care and prudence requires taxpayers to do more than simply rely on a tax preparer to timely process tax payments. (*Appeal of Scanlon, supra.*) It is well settled that a taxpayer's reliance on an agent, such as an accountant, to file a return or pay tax by the due date is not reasonable cause because a taxpayer has a personal, non-delegable obligation to meet statutory deadlines. (See *U.S. v Boyle* (1985) 469 U.S. 241, 252; *Appeal of Quality Tax & Financial Services, Inc.*, 2018-OTA-130P.) Moreover, the letter which appellants relied on was dated August 26, 2022, which was more than four months after the due date of their 2021 taxes. Thus, appellants were already late in paying their 2021 taxes before relying on their tax preparer. For these reasons, reasonable cause has not been established by appellants.

² The letter suggests that appellants should pay both their 2021 federal and 2021 California income taxes by October 17, 2022.

Issue 2: Whether interest should be abated.

The imposition of interest is mandatory and accrues on a tax deficiency regardless of the reason for the underpayment. (R&TC, § 19101(a); *Appeal of Balch*, 2018-OTA-159P.) There is no reasonable cause exception to the imposition of interest. (*Appeal of Moy*, 2019-OTA-057P.) Interest is not a penalty, but is compensation for a taxpayer's use of money which should have been paid to the state. (*Ibid.*) Therefore, to obtain interest relief appellant must qualify under R&TC section 19104 (pertaining to unreasonable error or delay by respondent in the performance of a ministerial or managerial act), 19112 (pertaining to extreme financial hardship caused by significant disability or other catastrophic circumstance), or 21012 (pertaining to reasonable reliance on the written advice of respondent). (*Ibid.*) Appellant did not allege and the record does not show that any of these waiver provisions are applicable here. Therefore, there is no basis for abating interest.

Issue 3: Whether the collection cost recovery fee was correctly imposed.

The collection cost recovery fee is imposed by respondent in accordance with R&TC section 19254(a)(1) whenever an individual fails to pay any amount of tax, penalty, or interest that was imposed and delinquent under the Personal Income Tax Law after respondent mails a notice for payment and possible collection action. Once properly imposed, there is no statutory provision that would excuse respondent from imposing the collection cost recovery fee for any circumstances, including reasonable cause. (See *Appeal of GEF Operating*, 2020-OTA-057P.) The amount of the fee is specified by the Legislature in the Annual Budget Act. (R&TC, § 19254(b).)

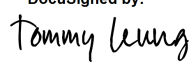
Here, the collection cost recovery fee was properly imposed because appellants did not pay the amount due until after respondent sent them the Final Notice Before Levy and Lien. Thus, OTA has no authority to waive this fee or modify the amount specified by the Legislature.

HOLDINGS

1. The late payment penalty should not be abated.
2. Interest should not be abated.
3. The collection cost recovery fee was properly imposed.

DISPOSITION

Respondent's action is sustained.

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Tommy Leung
Administrative Law Judge

Date Issued: 12/15/2023