

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
D. SIEGEL AND)
A. WEILLS)
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)
)

OPINION

Representing the Parties:

For Appellants: D. Siegel
 A. Weills

For Respondent: Paige Chang, Attorney

V. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, D. Siegel (appellant-husband) and A. Weills (appellant-wife) (collectively referred to as appellants) appeal action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$12,082 for the 2019 tax year.¹

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 to abate the late-filing penalty.
- 2. Whether appellants have established a basis to abate the underpayment of estimated tax penalty (estimated tax penalty).
- 3. Whether appellants have established entitlement to interest abatement.

¹ This amount includes a late-filing penalty, an underpayment of estimated tax penalty, and interest.

FACTUAL FINDINGS

1. Appellants attempted to electronically file (e-file) a 2019 joint California income tax return on or around July 15, 2020, using Turbo Tax preparation software.² On the same day, appellants separately mailed a check to FTB for \$36,004, which FTB processed effective as of July 15, 2020, and applied to appellants' 2020 tax year. The check stated it was for "2020 Form 540-ES."
2. FTB did not receive appellants' 2019 return.
3. On August 3, 2021, FTB sent appellant-wife a Request for Tax Return requesting that she either respond or file a 2019 return.
4. On October 15, 2021, FTB sent appellant-wife a Notice of Proposed Assessment (NPA) indicating that it had no record of receiving a 2019 return. The NPA proposed the imposition of tax and a late-filing penalty.
5. On November 18, 2021, FTB issued appellants a refund of \$34,897 from appellants' 2020 tax year, from the \$36,004 paid by appellants on July 15, 2020.
6. On December 15, 2021, appellant-husband responded to the NPA by providing a newly-signed copy of appellants' 2019 return.
7. On January 18, 2022, FTB issued appellants a Notice of Tax Return Change proposing to assess a late-filing penalty of \$8,840.50 and an estimated tax penalty of \$642.
8. Appellants paid the balance due and filed a claim for refund of \$12,082, requesting abatement of the late-filing penalty, estimated tax penalty, and interest.
9. FTB denied appellant's claim for refund and this timely appeal followed.

DISCUSSION

Issue 1: Whether appellants have established reasonable cause to abate the late-filing penalty.

R&TC section 19131 imposes a penalty when a taxpayer fails to file a tax return on or before its due date, unless the taxpayer establishes that the late filing was due to reasonable cause and was not due to willful neglect. While appellants attempted to timely e-file the joint 2019 return on July 15, 2020, during the extension period, the attempted e-filing was

² If successfully filed on July 15, 2020, this return would have been timely filed because in response to COVID-19, FTB postponed the due dates for returns, payments, and refund claims to July 15, 2020. (See <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2020-3-state-postpones-tax-deadlines-until-july-15-due-to-the-covid-19-pandemic.html>; FTB Notice 2020-02.)

unsuccessful, and appellants did not subsequently file a 2019 return until December 15, 2021. Because appellants failed to timely file the 2019 return by July 15, 2020, FTB properly imposed a late-filing penalty. Appellants do not dispute that FTB properly imposed the late-filing penalty, but argue that the penalty should be abated due to reasonable cause.

When FTB imposes a penalty, the law presumes that the penalty was imposed correctly. (*Appeal of Xie*, 2018-OTA-076P.) The burden of proof is on the taxpayer to show that reasonable cause exists to support an abatement of the late-filing penalty. (*Ibid.*) To establish reasonable cause, the taxpayer must show that the failure to file a timely return occurred despite the exercise of ordinary business care and prudence, or that cause existed as would prompt an ordinarily intelligent and prudent businessperson to have so acted under similar circumstance. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.)

Appellants assert that the penalty should be abated for reasonable cause because they reasonably believed that they timely filed their 2019 tax return. Appellants note that, on July 15, 2020, FTB cashed appellant's check in the amount of \$36,004, and that they did not receive any communication indicating there were issues with the California filing until August of 2021. Based on all of the above, appellants state that they reasonably believed that they timely filed their 2019 California tax return on or around July 15, 2020.

However, OTA has previously held that ordinary business care and prudence requires a taxpayer to ensure that a return submitted for e-filing was successfully transmitted to, and accepted by, FTB. "In the absence of an acknowledgment that a return was transmitted, received, or accepted, an ordinarily intelligent and prudent businessperson would have viewed the E-File History and acknowledgment records to confirm whether the return had been timely transmitted, received by Intuit, and accepted [by FTB]." (*Appeal of Quality Tax & Financial Services, Inc.*, 2018-OTA-130P; see also *Appeal of Auburn Old Town Gallery, LLC*, 2019-OTA-319P.)

Appellants' honest belief that they properly filed the 2019 joint California return is not sufficient to establish reasonable cause. The reasonable cause standard is an objective rather than subjective standard. As noted above, to establish reasonable cause, the taxpayer must show that the failure to file a timely return occurred despite the exercise of ordinary business care and prudence, or that cause existed as would prompt an ordinarily intelligent and prudent businessperson to have so acted under similar circumstance. (*Appeal of GEF Operating, Inc.*,

supra.) An ordinarily careful and prudent businessperson would have confirmed that their return had been received by FTB before concluding that the return was filed successfully. Therefore, appellants have not shown reasonable cause for the late filing of their return.

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

R&TC section 19136 incorporates by reference Internal Revenue Code (IRC) section 6654, which imposes an estimated tax penalty upon an individual for failing to timely make estimated income tax payments. (R&TC, § 19136(a); IRC, § 6654.) The estimated tax penalty may not be abated based solely on a finding of reasonable cause. (*Appeal of Johnson*, 2018-OTA-119P.) IRC section 6654(e)(3) provides limited exceptions to the imposition of the penalty if either of the following conditions are satisfied: (1) “by reason of casualty, disaster, or other unusual circumstances the imposition of [the penalty] would be against equity and good conscience”; or (2) the underpayment was due to reasonable cause and not willful neglect, and the taxpayer retired at the age of 62 or older in the year at issue or the prior year, or, alternatively, the taxpayer became disabled in the tax year for which the estimated tax payments were required to be made or in the preceding tax year.

Appellants do not dispute the calculation of the estimated tax penalty imposed for the 2019 tax year. Instead, appellants contend that the estimated tax penalty should be abated for the same reasons provided for abatement of the late-filing penalty. However, as noted above, the estimated tax penalty may not be abated based solely on a finding of reasonable cause. (*Appeal of Johnson, supra.*) Appellants offered no other argument or evidence to support their failure to make timely estimated tax payments for the 2019 tax year. The burden is on appellants, and they have not demonstrated that they are entitled to the relief provided by IRC section 6654(e)(3). Therefore, appellants have not shown that the estimated tax penalty for the 2019 tax year should be abated.

Issue 3: Whether appellants have established entitlement 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.) Imposing interest is mandatory; it is not a penalty, but it is compensation for appellant’s 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

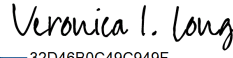
R&TC sections 19104, 19112, or 21012.³ (*Ibid.*) Appellants do not allege that any of the three statutory provisions for interest abatement apply to the facts of this case, and OTA concludes based on the evidence in the record that none of these statutory provisions apply. Therefore, FTB properly imposed interest and OTA has no basis to abate it.

HOLDINGS


1. Appellants have failed to establish that reasonable cause exists to abate the late-filing penalty.
2. Appellants have failed to establish a basis to abate the estimated tax penalty.
3. Appellants have failed to establish entitlement to interest abatement.

DISPOSITION


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

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 Veronica I. Long
 Administrative Law Judge

We concur:
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 Ovsep Akopchikyan
 Administrative Law Judge

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 Phyllis Mallard
 Legal Secretary, on behalf of
 Eddy Y.H. Lam
 Administrative Law Judge

Date Issued: 12/7/2023

³ Under R&TC section 19104, FTB 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 FTB employee. Under R&TC section 19112, FTB may waive interest for any period for which FTB determines that an individual has extreme financial hardship. OTA does not have authority to review extreme financial hardship determinations. (See *Appeal of Moy, supra.*) Under R&TC section 21012, an individual may be relieved from interest if that person reasonably relies on FTB’s written advice in response to a written request.