

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 230413007
O. TRAN AND)
T. TRAN)
_____)

OPINION

Representing the Parties:

For Appellants: O. Tran

For Respondent: Nancy Parker, Attorney

For Office of Tax Appeals: Nguyen Dang, Attorney

K. GAST, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, O. Tran and T. Tran (appellants) appeal an action by the Franchise Tax Board (respondent) denying appellants’ claim for refund of \$899.66 for the 2021 tax year.

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

ISSUE

Whether interest and the penalties for late payment and underpayment of estimated tax (estimated tax) should be abated.

FACTUAL FINDINGS

1. On April 15, 2022, appellants filed a joint 2021 California income tax return (Return), reporting, among other things, estimated tax payments of \$19,148 and a total amount due of \$378, which they paid with the filing of the Return.
2. However, appellants only made two estimated tax payments totaling \$10,208.
3. Upon processing the Return, respondent notified appellants they had an additional balance due of \$9,557.91, which included interest and penalties for late payment and

estimated tax totaling \$849.91. Respondent also informed appellants that to avoid the accrual of additional interest, they must pay the balance due by July 29, 2022.

4. On July 22, 2022, appellants paid the balance due.
5. On September 8, 2022, respondent notified appellants that because the balance had not yet been fully paid, additional interest of \$49.75 had accrued.
6. Appellants paid this amount and filed a claim for refund of \$899.66, seeking abatement of the penalties and interest.
7. Respondent denied appellants' refund claim and this timely appeal followed.
8. During this appeal, respondent stated that it will abate interest of \$49.75 because appellants paid the balance due of \$9,557.91 before the July 29, 2022 due date. Respondent noted that \$49.75 will be refunded to appellants at the close of this appeal.

DISCUSSION

Appellants argue that the penalties and interest should be abated because the failure to pay was due to an error in respondent's payment system. Appellants contend that they submitted an electronic payment with the filing of the Return on April 15, 2022, but respondent's payment system did not process the payment until July 2022.

Late-Payment Penalty

The late-payment penalty may be abated if the failure to timely pay was due to reasonable cause and not willful neglect. (R&TC, § 19132(a)(1).) To establish reasonable cause for abating the penalty, taxpayers must show that the failure to timely pay occurred despite the exercise of ordinary business care and prudence. (*Appeal of Scanlon*, 2018-OTA-075P.)

Appellants are mistaken as to the cause of the late payment. The \$378 payment appellants submitted on April 15, 2022, was in fact processed and credited to appellants on the same day. The cause of the late payment, therefore, was not due to an error in processing this payment—it was due to appellants' payment being insufficient to cover the tax liability owed. This, in turn, was caused by appellants having miscalculated their estimated tax payments and ultimately, the amount they were required to pay.

Appellants provide no explanation or evidence showing that they acted with due care in ensuring that the tax would be timely paid. Although it is unclear as to the exact cause of appellants' erroneous reporting of their estimated tax payments, to the extent it was the result of

an inadvertent error or oversight, it is well established that such error or oversight does not constitute reasonable cause for abating the penalty. (*Appeal of Friedman*, 2018-OTA-077P.)

Estimated Tax Penalty

The estimated tax penalty may also be waived upon a showing of reasonable cause, but only for those taxpayers who have either retired after having attained age 62 or became disabled in the taxable year for which the estimated tax payments were required to be made or in the previous taxable year. (R&TC, § 19136 [incorporating with some modifications Internal Revenue Code, § 6654].)

Appellants have not shown that they meet the above conditions to be eligible for waiver of the penalty based on reasonable cause. And even assuming such were the case here, appellants' argument concerning their April 15, 2022 payment does not address their failure to make sufficient quarterly estimated tax payments prior to this date.

Interest

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.) Unlike the penalties above, there is no reasonable cause exception to the imposition of interest. (*Appeal of Moy*, 2019-OTA-057P.) To obtain interest relief, appellants must qualify under one of the waiver provisions of R&TC sections 19104 (pertaining to unreasonable error or delay by respondent in the performance of a ministerial or managerial act) or 21012 (pertaining to reasonable reliance on the written advice of respondent).¹ (*Ibid.*) Appellants do not allege, and the record does not reflect, that any of these waiver provisions are applicable here.

For the foregoing reasons, abatement of the interest and penalties is not warranted.

¹ The Office of Tax Appeals does not have jurisdiction to review respondent's denial of interest waiver pursuant to R&TC section 19112 (pertaining to extreme financial hardship caused by significant disability or other catastrophic circumstance). (*Appeal of Moy, supra.*)

HOLDING

The interest and penalties should not be abated.

DISPOSITION

OTA modifies respondent’s action pursuant to its concession to abate interest of \$49.75, as noted in factual finding #8. Otherwise, respondent’s action is sustained.

DocuSigned by:
Kenneth Gast
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Kenneth Gast
Administrative Law Judge

We concur:

DocuSigned by:
Huy "Mike" Le
A11783ADD49442B...
Huy "Mike" Le
Administrative Law Judge

DocuSigned by:
Josh Lambert
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Josh Lambert
Administrative Law Judge

Date Issued: 6/12/2024