

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of:  <b>R. TAM AND</b> <b>A. TAM</b>	) ) ) ) ) ) )	OTA Case No. 230513420
---	---------------------------------	------------------------

---

**OPINION**

Representing the Parties:

For Appellants:	R. Tam A. Tam
-----------------	------------------

For Respondent:	Katherine Gan, Graduate Legal Assistant
-----------------	---

S. HOSEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, R. Tam and A. Tam (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$1,036.72<sup>1</sup> plus interest for the 2021 tax year.

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 a basis to abate the late payment penalty.
2. Whether appellants have established a basis to abate the estimated tax penalty.

**FACTUAL FINDINGS**

1. Appellants filed their 2021 original California income tax return (return) within the automatic extension period on October 12, 2022. Appellants made a payment of \$10,706 on the same day.

---

<sup>1</sup> FTB’s claim denial letter indicated that it was disallowing appellants’ claim for refund in the amount of \$1,641.18, which includes an estimated tax penalty of \$280, a late payment penalty of \$756.72, and interest of \$604.46. The penalties total \$1,036.72. Appellants do not separately contest the interest, and this Opinion will not separately address interest.

2. Appellants filed an amended return on December 31, 2022. Appellants then made an additional payment of \$17,773 on February 2, 2023.
3. FTB issued a Notice of Tax Return Change (Notice) informing appellants that because they did not timely pay the tax by April 15, 2022, it was imposing a late payment penalty of \$756.72 and an estimated tax penalty of \$280, plus interest.
4. Appellants paid the balance and claimed a refund asserting that they paid the tax timely.
5. FTB denied the claim for refund and appellants timely filed this appeal.

### DISCUSSION

#### Issue 1: Whether appellants have established a basis 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 tax. Generally, the date prescribed for the payment of the tax is the due date of the return (determined without regard to any extension of time for filing the return). (R&TC, § 19001.) Here, the date for appellants' payment of tax was April 15, 2022. (R&TC, § 18601(a).)

When FTB imposes a penalty, it is presumed that the penalty was imposed correctly. (*Appeal of Xie*, 2018-OTA-076P.) The late payment penalty may be abated if a 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 the late payment of tax, taxpayers must show that the failure to make a timely payment of the proper amount of tax occurred despite the exercise of ordinary business care and prudence. (*Appeal of Moren*, 2019-OTA-176P.) Taxpayers bear the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Ibid.*) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.)

Appellants argue that the penalties and the applicable interest should be abated because of the \$17,773 payment on February 2, 2023, stating the Notice provided a different payment

due date.<sup>2</sup> However, appellants' 2021 taxes were due on April 15, 2022, and not when FTB issued its Notice in February 2023. Here, appellants failed to timely pay the tax due by the April 15, 2022 deadline. Therefore, the late payment penalty was properly imposed, and appellants have not provided credible and competent evidence to meet their burden of proof for abatement of the penalty.

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

Except as otherwise provided, California conforms to Internal Revenue Code (IRC) section 6654 and imposes an estimated tax penalty for the failure to timely make estimated income tax payments. (R&TC, § 19136(a); IRC, § 6654.)

There is no general reasonable cause exception to the estimated tax penalty, and the imposition of the estimated tax penalty is mandatory unless the taxpayer establishes that a statutory exception applies. (*Appeal of Johnson*, 2018-OTA-119P.) The estimated tax penalty may be waived under two limited exceptions: (1) where the underpayment of tax was due to casualty, disaster, or other unusual circumstances such that imposition of the penalty would be against equity and good conscience; or (2) where the underpayment is due to reasonable cause and not willful neglect, if the taxpayer 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. (IRC, § 6654(e)(3).)

Appellants have not claimed any casualty, disaster or other unusual circumstance, so this exception does not apply to this appeal. Regarding the second exception, appellants have not shown that they are either retired after attaining the age of 62 or became disabled. Lastly, the estimated tax penalty is only imposed for the "period of underpayment" which runs from the date the installed payment is due through the date paid or April 15 following the close of the tax year (April 15, 2022), whichever is earlier. (IRC, § 6654(a)(3), (b)(2).) Thus, additional estimated

---

<sup>2</sup> Appellants now argue that while their payment on February 2, 2017, was late, the penalties and interest were not properly calculated since the Notice failed to note appellants' payment of \$17,773 made on February 2, 2023. However, while this payment was not reflected in the Notice issued by FTB in February 2023, it has since been applied to appellants' 2021 tax year account effective February 2, 2023, and FTB's computations of the penalties and interest correctly taken to account appellants' February 2, 2023 payment of \$17,773. Furthermore, interest was reduced from \$650.43 per the Notice to \$604.46 and the late payment penalty was only computed based on appellants' reported tax due per the original return of \$9,459, which was due on April 15, 2022, but was not paid until October 12, 2022. Thus, an additional late payment penalty was not assessed or accrued after appellants' payment of \$10,706 on October 12, 2022, and therefore is not impacted by appellants' payment of \$17,773 on February 2, 2023.


tax penalty did not accrue after April 15, 2022, and the penalty amount is not impacted by appellants' payment of \$17,773 on February 3, 2023. Therefore, there is no basis to abate the estimated tax penalty.

HOLDINGS

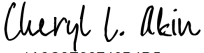
1. Appellants have not established a basis to abate the late payment penalty.
2. Appellants have not established a basis to abate the estimated tax penalty.

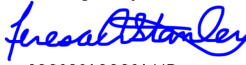
DISPOSITION

FTB's action is sustained.

DocuSigned by:  
  
 6D3FE4A0CA514E7...  
 Sara A. Hosey  
 Administrative Law Judge

We concur:

DocuSigned by:  
  
 1A8C8E38740B4D5...  
 Cheryl L. Akin  
 Administrative Law Judge

DocuSigned by:  
  
 0CC6C6ACCC6A44D...  
 Teresa A. Stanley  
 Administrative Law Judge

Date Issued: 7/29/2024