

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: )  
 ) OTA Case No. 230813989  
**H. RABBIE AND** )  
**L. JAZAYERI** )  
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**OPINION**

Representing the Parties:

For Appellants: Yesenia Mejia  
For Respondent: Paige Chang, Attorney

V. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, H. Rabbie (appellant-husband) and L. Jazayeri (appellant-wife) (collectively, appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants' claim for refund of \$11,490 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 underpayment of estimated tax penalty (estimate penalty).
3. Whether appellants have established a basis to abate interest.

**FACTUAL FINDINGS**

1. During 2021, appellants sold a rental property.
2. Appellant-husband was under medical care from March 2, 2022, through November 28, 2022.
3. Appellants timely filed a joint California income tax return, reporting a tax balance due.

4. FTB issued appellants a Notice of Tax Return Change – Revised Balance imposing a late-payment penalty, an estimate penalty, and interest.
5. Appellants paid the tax balance due on December 5, 2022.
6. Subsequently, appellants paid the penalties and interest and filed a claim for refund.
7. FTB denied appellants’ claim for refund. This timely appeal follows.

### 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 the tax. Appellants do not dispute the imposition or computation of the late-payment penalty, but contend that the penalty should be abated for reasonable cause.

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).) When FTB imposes a penalty, the law presumes that the penalty was imposed correctly, and the taxpayers have the burden of proof to show that reasonable cause exists to support abatement of the penalty. (*Appeal of Xie*, 2018-OTA-076P.) 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.) The taxpayers bear the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Ibid.*) An asserted lack of documentation or difficulty in calculating a tax liability does not, by itself, constitute reasonable cause. (*Ibid.*) Illness may establish reasonable cause where the taxpayers present credible and competent proof that the circumstances of the illness prevented the taxpayers from complying with the law. (*Appeal of Triple Crown Baseball LLC*, 2019-OTA-025P.)

Appellants assert that their failure to make a timely payment of tax was due to a one-time sale of a rental property that caused a larger than normal tax liability, and that appellant-husband was under medical care from March 2, 2022, through November 28, 2022.

Appellants do not explain why their sale of rental property caused them to be unable to make a timely payment of tax. To the extent that it caused difficulty in computing the tax due,

an asserted difficulty in calculating a tax liability does not, by itself, constitute reasonable cause. (*Appeal of Moren, supra.*) Also, while appellant-husband's medical circumstances are sympathetic, appellants have not established that appellant-husband's medical condition prevented him from complying with the law. In addition, appellants do not explain why appellant-husband's medical condition prevented appellant-wife from making a timely payment of tax to satisfy appellants' tax liability.

Appellants also contend that they have a history of complying with tax law. However, California law does not allow for penalty abatement on the basis of a taxpayer's filing history for the 2021 tax year.<sup>1</sup> Accordingly, appellants have not established a basis to abate the late-payment penalty.

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

Internal Revenue Code (IRC) section 6654 imposes an addition to tax, which is treated and often referred to as a penalty, where an individual fails to timely pay estimated tax. Subject to certain exceptions not relevant to the issues on appeal, R&TC section 19136 incorporates IRC section 6654. Appellants do not dispute the imposition or computation of the estimate penalty, but make reasonable cause type arguments that the penalty should be abated.

There is no provision in the IRC or R&TC that allows the estimate penalty to be abated based solely on a finding of reasonable cause. As a result, there is no general reasonable cause exception to imposition of the estimate penalty. (*Appeal of Saltzman, 2019-OTA-070P.*) The estimate penalty is mandatory unless the taxpayer establishes that a statutory exception applies. (*Ibid.*) Although there is no provision allowing for abatement of the estimate penalty based solely on reasonable cause, IRC section 6654(e)(3)(A) provides that the taxing agency may waive the estimate penalty if it determines that, "by reason of casualty, disaster, or other unusual circumstances the imposition of [the estimated tax penalty] would be against equity and good conscience."<sup>2</sup> (*Ibid.*)

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<sup>1</sup> R&TC section 19132.5 allows for the abatement of an individual's first-time timeliness penalties. However, that section only applies to tax years beginning on or after January 1, 2022.

<sup>2</sup> IRC section 6654(e)(3)(B) provides another potential avenue for waiver of the penalty where the taxing agency determines that: (i) during the applicable tax year or the preceding year, the taxpayer either retired after having attained age 62, or became disabled, and (ii) the underpayment was due to "reasonable cause" and not due to willful neglect. However, there is no evidence or argument that this provision is applicable.

Appellants make the same reasonable cause type arguments as discussed previously. To the extent that appellants assert that the sale of their rental property caused a one-time larger than normal tax liability, imposition of the estimate penalty is not against equity and good conscience where the tax liability is a result of a payment received by taxpayers. (*Appeal of Saltzman, supra.*) To the extent that appellants contend that appellant-husband's medical condition constitutes reasonable cause, there is no reasonable cause exception to the imposition of the estimate penalty. (*Ibid.*) Accordingly, appellants have not established a basis to abate the estimate penalty.

Issue 3: Whether appellants have established a basis to abate interest.

Tax is due on the original due date of the return without regard to any filing extension. (R&TC, § 19001.) If taxpayers do not pay the tax by the original due date of the tax return, or if FTB assesses additional tax, the law provides for charging interest on the balance due. (R&TC, § 19101.) Imposition of interest is mandatory; it is not a penalty, but it is compensation for a taxpayer's use of money after it should have been paid to the state. (*Appeal of Moy, 2019-OTA-057P.*) There is no reasonable cause exception to the imposition of interest. (*Appeal of GEF Operating, Inc., 2020-OTA-057P.*) To obtain relief from interest, taxpayers must qualify under the waiver provisions of R&TC sections 19104, 19112, or 21012. (*Appeal of Moy, supra.*)

In this case, appellants only provide reasonable cause arguments for the abatement of interest. Appellants have not shown that she qualifies for waiver or abatement of interest under the provisions of R&TC sections 19104, 19112, or 21012.<sup>3</sup> Additionally, there is no reasonable cause exception to the imposition of interest. (*Appeal of GEF Operating, Inc., supra.*) Consequently, appellants have not established a basis to interest abatement.

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<sup>3</sup> OTA does not have jurisdiction to review FTB's interest abatement determination under R&TC section 19112. (*Appeal of Moy, supra.*)

HOLDINGS


1. Appellants have not established a basis to abate the late-payment penalty.
2. Appellants have not established a basis to abate the estimate penalty.
3. Appellants have not established a basis to abate interest.


DISPOSITION

FTB’s denial of appellants’ claim for refund is sustained.

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 Veronica I. Long  
 Administrative Law Judge

We concur:

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 Administrative Law Judge

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 Josh Lambert  
 Administrative Law Judge

Date Issued: 7/18/2024