

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 230513228
P. SHIAH AND)
Y. CHEN)
_____)

OPINION

Representing the Parties:

For Appellants: Holly Liu, CPA
For Respondent: Paige Chang, Attorney

A. KLETTER, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, P. Shiah and Y. Chen (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$2,312.07 plus applicable 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 shown reasonable cause to abate the late payment penalty.
- 2. Whether appellants are entitled to interest abatement.

FACTUAL FINDINGS

- 1. Appellants timely filed a 2021 joint California Nonresident or Part-Year Resident Income Tax Return (return), which reported total tax of \$71,374, California income tax withholding of \$10,979, and estimated tax payments and other payments of \$36,336, and tax due of \$24,059. Appellants also self-assessed interest and penalties on the return. On October 15, 2022, appellants paid the balance reported as due.
- 2. On November 14, 2022, FTB issued appellants a Notice of Tax Return Change – Revised Balance (Notice), which reduced the amount of estimated tax and other payments to

\$32,200, the amount FTB's records showed as received, imposed a late payment penalty and interest and showed a balance due.¹

3. On January 3, 2023, appellants made a payment that fully satisfied the tax liability. Appellants subsequently fully satisfied the balance due. Appellants later filed a claim for refund of the late payment penalty and interest.
4. On March 24, 2023, FTB denied appellants' claim for refund.
5. This timely appeal followed. Appellants provide a copy of their federal Form 8949, Sales and Other Dispositions of Capital Assets.

DISCUSSION

Issue 1: Whether appellants have shown reasonable cause to abate the late payment penalty.

R&TC section 19132(a) imposes a late payment penalty when taxpayers fail 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 tax is the due date of the return (without regard to extensions of time for filing). (R&TC, § 19001.) When FTB imposes a penalty, the law presumes that the penalty was imposed correctly. (*Appeal of Xie*, 2018-OTA-076P.) Here, FTB properly imposed the late payment penalty because the payment due date was April 15, 2022, and appellants did not satisfy the 2021 tax liability until January 3, 2023, nearly eight months later. Appellants do not dispute the imposition or calculation of the penalty.

The late payment penalty may be abated if taxpayers show that the failure to make a timely payment of tax was due to reasonable cause and 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 (*Moren*).) Taxpayers bear the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Ibid.*) As to appellants' burden, the applicable standard of proof is by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(b).) Unsupported assertions are insufficient to satisfy taxpayers' burden of proof. (*Moren, supra.*)

¹ The Notice also imposed an underpayment of estimated tax penalty, which appellants do not dispute; therefore, it is not discussed further.

Appellants assert that they used reasonable care in determining their capital gains figure, but further assert that the cryptocurrency tracking software gave them an inaccurate figure due to the number of transactions. However, appellants do not provide any evidence to support these assertions, and therefore, fail to meet their burden of proof. (*Moren, supra.*)

Appellants attach a copy of the federal Form 8949, Sales and Other Dispositions of Capital Assets to demonstrate the complexity of arriving at the correct figure. However, lack of documentation or difficulty in calculating a tax liability does not, by itself, constitute reasonable cause for a late payment of tax. (*Moren, supra.*) Taxpayers' difficulty in determining income with exactitude does not negate the requirement that taxpayers make payments of tax based upon a reasonably accurate estimate of their tax liability. (*Appeal of Rougeau, 2021-OTA-335P.*) Taxpayers must establish that they could not have acquired the information necessary to make an estimate of their tax liability. (*Moren, supra.*) Accordingly, appellants have not shown reasonable cause to abate the late payment penalty.

Issue 2: Whether appellants are entitled 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(a).) Imposing interest is mandatory; it is not a penalty, but it is compensation for appellants' 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 section 19104 or 21012.² (*Ibid.*)

Appellants do not allege, and the evidence does not show, that either statutory provision for interest abatement applies to the facts of this case. R&TC section 19104 does not apply here because appellants do not allege, and the evidence does not show, that the interest is attributable in whole or in part, to any unreasonable error or delay by an FTB employee. R&TC section 21012 does not apply because FTB did not provide appellants with any requested written advice. Therefore, FTB properly imposed interest and OTA has no basis to abate it.

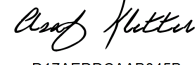
² Under R&TC section 19112, FTB may waive *unpaid* interest for any period for which FTB determines that an individual or fiduciary is unable to pay interest due to extreme financial hardship. However, appellants have paid the interest in this appeal. Moreover, OTA does not have authority to review FTB's denial of a request to waive interest under R&TC section 19112. (*Appeal of Moy, supra.*)

HOLDINGS

1. Appellants have not shown reasonable cause to abate the late payment penalty.
2. Appellants are not entitled to interest abatement.


DISPOSITION

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


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Asaf Kletter
Administrative Law Judge

We concur:

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Josh Lambert
Administrative Law Judge

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Veronica I. Long
Administrative Law Judge

Date Issued: 7/25/2024