

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 230613584  
E. BJORLIN AND )  
A. BJORLIN )  
\_\_\_\_\_ )

**OPINION**

Representing the Parties:

For Appellants: Andrew Stanley, Associate

For Respondent: Katherine Gan, Graduate Legal Assistant  
Noel Garcia-Rosenblum, Attorney

For Office of Tax Appeals: Nguyen Dang, Attorney

S. HOSEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, E. Bjorlin and A. Bjorlin (appellants) appeal an action by the Franchise Tax Board (respondent) denying appellants’ claim for refund of \$10,371.07 for the 2021 tax year.<sup>1</sup>

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

**ISSUE**

Whether appellants have established a basis for abating the late-payment penalty, estimated tax penalty, and interest.

**FACTUAL FINDINGS**

1. On April 9, 2021, appellants scheduled an estimated tax payment for the 2021 tax year using respondent’s electronic Web Pay system.
2. This payment was unsuccessful.
3. Appellants filed a joint 2021 California income tax return (Return) reporting estimated

---

<sup>1</sup> This amount includes a \$7,778.18 late-payment penalty, an \$1,645 estimated tax penalty, and \$947.89 of applicable interest.

- tax payments which included the unsuccessful April 9, 2021 electronic payment.
4. After processing the Return, respondent issued to appellants a Notice of Tax Return Change reducing appellants' reported estimated tax payments, imposing an estimated tax penalty, a late-payment penalty and interest, and notifying appellants of a balance due.
  5. Appellants paid the balance due and filed a refund claim seeking abatement of the penalties and interest.
  6. Respondent denied the claim and this timely appeal followed.

### DISCUSSION

Appellants argue that the penalties and interest should be abated because their attempted April 9, 2021 electronic payment failed due to a bank error, which was outside of appellants' control and occurred without appellants' knowledge. Appellants also request a one-time abatement of the penalties and interest pursuant to R&TC section 19132.5. Appellants contend that although the statute is effective only for tax years beginning on or after January 1, 2022, the "spirit of this new legislation empowers [respondent] to provide relief from penalties."

#### 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; that is, taxpayers must show they acted as an ordinarily intelligent and prudent businessperson would have acted under similar circumstances. (*Appeal of Moren*, 2019-OTA-176P.)

The exercise of ordinary business care and prudence requires taxpayers to take reasonable steps to verify that a scheduled electronic payment was successful, and if necessary, to take the appropriate corrective actions to ensure a timely payment. (*Appeal of Scanlon*, 2018-OTA-075P.) For example, by monitoring their bank account after submitting a payment to respondent, taxpayers can verify whether an electronic payment has been successfully debited from their account. (*Ibid.*)

The filing of the Return reporting an unsuccessful estimated tax payment suggests that appellants submitted the payment without verifying whether it was successful. Appellants therefore did not exercise ordinary business care and prudence in ensuring that the taxes would

be timely paid. In other words, while the cause of the April 9, 2021 electronic payment failure may have been outside appellants' control, this does not excuse appellants' failure to verify and then resubmit their estimated tax payment prior to the payment deadline.

Accordingly, appellants have not shown reasonable cause for abating the penalty.

### Estimated Tax Penalty

The estimated tax penalty may 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(e)(3)(B)].) There is no argument or evidence that this provision is applicable here, and as addressed above, appellants' failure to verify whether the April 9, 2021 electronic payment was successful indicates that they did not exercise ordinary business care and prudence in performing their tax obligations.

### 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.) 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), 19112 (pertaining to extreme financial hardship caused by significant disability or other catastrophic circumstance),<sup>2</sup> or 21012 (pertaining to reasonable reliance on the written advice of respondent). (*Ibid.*) Appellants do not allege, and the record does not reflect, that any of these waiver provisions are applicable here.

---

<sup>2</sup> Only respondent may abate interest pursuant to R&TC section 19112. (See *Appeal of Moy*, *supra*.)

### One-Time Penalty Abatement

R&TC section 19132.5 provides for a one-time abatement of a “timeliness penalty” for individual taxpayers with a good tax compliance history. A timeliness penalty is expressly defined as “a penalty imposed under Section 19131 or 19132 for one taxable year with respect to a return filed by an individual for that taxable year.” (R&TC, § 19132.5(c).) In addition, the statute unequivocally states that this “section shall apply to requests for abatement made for taxable years beginning on or after January 1, 2022.” (R&TC, § 19132.5(f).)

The fundamental consideration in determining how a statute should be applied is the intent of the lawmakers. (*Day v. City of Fontana* (2001) 25 Cal.4th 268, 272, citations omitted.) That intent is best expressed in the language of the statute, giving the words their usual and ordinary meaning. (*Ibid.*) Where statutory language is unambiguous, the plain meaning of the language governs. (*Ibid.*)

Here, the plain language of the statute makes clear that the penalties and interest at issue do not qualify for one-time abatement, which appellants appear to acknowledge (i.e., the late-payment penalty in this appeal involves the 2021, not 2022, tax year, and the estimated tax penalty and interest are not covered by R&TC section 19132.5, regardless of the tax year at issue). Because there is no ambiguity in the statutory language as to the requirements for one-time abatement, the Office of Tax Appeals must therefore apply the statute as it is plainly written.

HOLDING

Appellants have not established a basis for abating the late-payment penalty, estimated tax penalty, and interest.

DISPOSITION

Respondent’s action is sustained.

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

We concur:

Signed by:  
*Veronica I. Long*  
32D46B0C49C949F...  
Veronica I. Long  
Administrative Law Judge

DocuSigned by:  
*Kenneth Gast*  
3AF5C325B03B456...  
Kenneth Gast  
Administrative Law Judge

Date Issued: 8/28/2024