

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
M. MOOK AND)
L. MOOK)
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)
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OTA Case No. 230413157

OPINION

Representing the Parties:

For Appellants: M. Mook
L. Mook

For Respondent: Tristen Thalhuber, Attorney
Cynthia D. Kent, Attorney Supervisor

A. KLETTER, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. Mook and L. Mook (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants' claim for refund of \$6,812.56¹ for the 2021 tax year.

Office of Tax Appeals (OTA) Panel Members Asaf Kletter, Cheryl L. Akin, and Teresa A. Stanley held a virtual oral hearing for this matter on August 14, 2024. At the conclusion of the hearing, the record was closed, and this matter was submitted for an opinion pursuant to California Code of Regulations, title 18, section 30209(b).

ISSUE

Whether appellants have established reasonable cause to abate the late-payment penalty for the 2021 tax year.

FACTUAL FINDINGS

1. Appellants timely filed a joint 2021 California Nonresident or Part-Year Resident Income Tax Return (return) reporting total tax of \$87,519, California income tax withholding of

¹ On appeal, appellants concede interest of \$1,373.80.

- \$1,181 and withholding of \$1,181,² total payments of \$2,362 (\$1,181 + \$1,181), and tax due of \$85,157. On October 12, 2022, appellants paid the tax reported as due.
2. On February 8, 2023, FTB issued appellants a Notice of Tax Return Change – Revised Balance (Notice), which, as relevant to this appeal, revised appellants' withholding to \$1,181, to exclude the duplicated withholding payment claimed for the 2021 tax year, and imposed a late-payment penalty of \$6,812.56.
 3. On February 16, 2023, appellants made a payment that satisfied the liability. Appellants filed a timely claim for refund to abate the late-payment penalty.
 4. On June 7, 2023, FTB denied appellants' claim for refund.
 5. This timely appeal followed.

DISCUSSION

R&TC section 19132(a)(1)(A) imposes a late-payment penalty when taxpayers fail to pay the amount shown as tax on the return by the date prescribed for the payment of the tax. Generally, the date prescribed for the payment of the tax is the due date of the return (without regard to extensions of time for filing). (R&TC, § 19001.) For individual filers, the 2021 return was due on April 15, 2022. (R&TC, § 18566.) When FTB imposes a penalty, the law presumes that the penalty was imposed correctly, and taxpayers bear the burden of proof to establish otherwise. (*Appeal of Xie*, 2018-OTA-076P.)

Here, FTB imposed the late-payment penalty because April 15, 2022, was the payment due date for the 2021 tax year, and appellants did not fully satisfy their 2021 tax liability until February 16, 2023, approximately 10 months later. Appellants do not dispute that the tax due was paid late or FTB's calculations; rather, appellants assert reasonable cause to abate the late-payment penalty.

The late-payment penalty may be abated where taxpayers show 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 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.*) Asserted lack of documentation or difficulty in calculating a tax liability does not, by itself, constitute reasonable cause for the late payment of tax. (*Ibid.*) If taxpayers assert that they do not have the information necessary to

² Appellants appear to have reported the withholding twice on different lines of the return.

make a reasonably accurate estimate of their tax liability, they must show the efforts made to acquire that information from the source that held it, and that difficulties in obtaining the necessary information led to a delay in payment. (*Ibid.*) The most important factor in determining whether taxpayers acted with reasonable cause and in good faith is the extent of the taxpayers' effort to ascertain their proper tax liability. (*Appeal of Steffier*, 2024-OTA-017P.)

Appellants assert that they made an honest mistake in not paying the amount due timely, and that the amount of the late-payment penalty is onerous. However, the failure to timely remit the balance due on a tax liability caused by an oversight does not, by itself, constitute reasonable cause. (*Appeal of Friedman*, 2018-OTA-077P.) Moreover, OTA's function in the appeals process is to determine the correct amount of the taxpayers' California income tax liability; upon concluding that the liability was correctly assessed, OTA has no legal basis to make discretionary adjustments to the amount of the liability. (*Appeal of Robinson*, 2018-OTA-059P.)

Appellants also assert that they realized an extraordinary amount of capital gains income attributable to their interest in partnerships operating in California, that they did not have access to the partnerships' books and records, the partnerships failed to timely provide them with sufficient information at the time the payment was due, and that appellants discovered the missing information only upon filing the 2021 return. As described above, asserted lack of documentation or difficulty in calculating a tax liability does not, by itself, constitute reasonable cause for the late payment of tax. (*Appeal of Moren*, *supra.*) Moreover, appellants have not explained what efforts, if any, they took to acquire the information from the source that held it, or that difficulties in obtaining the necessary information led to a delay in payment. (*Ibid.*)

At the hearing, appellants stated that they discovered the underpayment of tax around late September of 2022, when their accountant brought it to their attention. However, based on the record before OTA, appellants have not established the extent of their effort, if any, to ascertain their proper tax liability by the payment due date. (*Appeal of Steffier*, *supra.*) Thus, appellants have not established reasonable cause based on the alleged lack of timely information from the partnerships.³

³ Appellants contend that appellant M. Mook had COVID-19 between April 10, 2022, and April 20, 2022, which compounded the situation. While illness may establish reasonable cause, the taxpayer must present credible and competent proof that the circumstances of the illness prevented the taxpayer from complying with the law. (*Appeal of Triple Crown Baseball LLC*, 2019-OTA-025P.) Moreover, an acceptable reason for the failure to pay taxes will excuse such failure only so long as the reason remains valid. (*Ibid.*) Here, appellants have provided no proof that M. Mook's illness with COVID-19 between April 10, 2022, and April 20, 2022, continuously prevented appellants from paying the tax due until February 23, 2023, when appellants' 2021 tax liability was fully satisfied.


Appellants also request first-time abatement based on their long history of timely filing California returns and timely paying the taxes due. While the IRS has a penalty abatement program called First Time Abate, neither the California legislature nor FTB adopted a comparable penalty abatement program for the 2021 tax year.⁴ Thus, no relief is available on this basis.

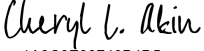
HOLDING


Appellants have not established reasonable cause to abate the late-payment penalty for the 2021 tax year.

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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Cheryl L. Akin
Administrative Law Judge

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Teresa A. Stanley
Administrative Law Judge

Date Issued: 11/12/2024

⁴ R&TC section 19132.5, effective for tax years beginning on or after January 1, 2022, allows taxpayers to request one-time abatement of a timeliness penalty. This provision is inapplicable to the 2021 tax year. (R&TC, § 19132.5(f)(1).)