

OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA

In the Matter of the Appeal of:	)	OTA Case No. 240516123
<b>A. SETAYESH AND</b>	)	
<b>A. EJTEHADI</b>	)	
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**OPINION**

Representing the Parties:

For Appellants:	A. Setayesh A. Ejtehad
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For Respondent:	Alison Strand, Attorney
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T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, A. Setayesh and A. Ejtehad (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants' claim for refund of \$3,750 for the 2021 taxable year.

Appellants elected to have this appeal determined pursuant to the procedures of the Small Case Program. Those procedures require the assignment of a single panel member. (Cal. Code Regs., tit. 18, § 30209.05.) Appellants waived the right to an oral hearing; therefore, the matter was submitted to the Office of Tax Appeals on the written record pursuant to California Code of Regulations, title 18, section 30209(a).

**ISSUES**

1. Have appellants established reasonable cause to abate the late-payment penalty?
2. Have appellants established a basis to abate interest?

**FACTUAL FINDINGS**

1. Appellants filed a timely 2021 California Resident Income Tax Return reporting total tax of \$36,505, payments of \$15,000, and tax due of \$21,505.
2. Appellants did not pay the tax due when they filed their tax return.

3. On July 12, 2022, FTB issued a Notice of Tax Return Change – Revised Balance, which imposed a late-payment penalty plus interest.<sup>1</sup>
4. Under an installment agreement established with FTB, appellants paid the tax, penalty, and interest between August 22, 2022, and November 9, 2023.
5. Appellants filed a claim for refund based on reasonable cause, which FTB denied.
6. This timely appeal followed.

### DISCUSSION

#### Issue 1: Have appellants established reasonable cause to abate the late-payment penalty?

R&TC section 19132 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.)

The late-payment penalty may be abated when 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.*)

Appellants do not dispute that the penalty was properly calculated or imposed. Appellants assert that they had a large capital gain in 2021 and invested all of that gain plus their savings in the stock market in January 2022. Appellants contend that they lost all of their investment by April 2022 and were facing a “desperate financial situation.” In the claim for refund filed with FTB, appellants asserted that they have always filed tax returns on time and paid the taxes in full. Appellants requested that FTB abate the penalty because they are under a lot of financial stress.

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<sup>1</sup> As of the date of the Notice, the late-payment penalty was \$1,397.83 plus interest. FTB later adjusted the penalty amount to \$2,615.40 plus interest because the penalty continued to increase for each month the tax remained unpaid. (R&TC, § 19132(a)(2)(B).)

Appellants have not established that they exercised ordinary business care and prudence. An ordinarily intelligent and prudent businessperson would have estimated the tax on the capital gain and set that money aside in case the investment was lost. Appellants do not show how they took steps to preserve sufficient capital to pay taxes when they were due. As appellants have the burden of proof, they have not established reasonable cause to abate the late-payment penalty.<sup>2</sup>

Issue 2: Have appellants established a basis to abate interest?

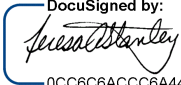
Interest must be assessed from the date a tax payment is due through the date that it is paid. (R&TC, § 19101.) Imposition of interest is mandatory; it is not a penalty, but it is compensation for appellants' use of money after it should have been paid to the state. (*Appeal of Moy*, 2019-OTA-057P.) Waiver of interest may be available to taxpayers under certain circumstances, but none are present in this appeal. (See R&TC §§ 19104, 19112, 21012.) Appellants have not established that they are entitled to interest abatement.

HOLDINGS

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

DISPOSITION

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

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Teresa A. Stanley  
Administrative Law Judge

Date Issued: 12/26/2024

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<sup>2</sup> With respect to appellants' claim that they have always filed and paid taxes on time, the law provides for a one-time abatement of a timeliness penalty for individual taxpayers who are subject to the personal income tax. (R&TC, § 19132.5(a).) The one-time abatement only applies to requests for abatement made for taxable years beginning on or after January 1, 2022. (See R&TC, § 19132.5(f).)