

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Consolidated Appeals of:)	OTA Case Nos. 230914242, 230914243
THE RJ PAUL FAMILY LIMITED)	
PARTNERSHIP; AND)	
TOWN CENTER FAMILY LP)	

OPINION

Representing the Parties:

For Appellants:	John Simonelli, CPA
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For Respondent:	Andrea Watkins, Attorney
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For Office of Tax Appeals:	Andrew Jacobson, Attorney
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E. PARKER, Hearing Officer: Pursuant to Revenue and Taxation Code (R&TC) section 19324, The RJ Paul Family Limited Partnership (RJ Paul) and Town Center Family LP (Town Center) (collectively, appellants) appeal actions by respondent Franchise Tax Board (FTB) denying appellants' claims for refund of \$2,314.66 and \$11,192.95, respectively, for the 2021 tax year.¹

Appellants waived their rights to an oral hearing; therefore, the matter was submitted to the Office of Tax Appeals (OTA) on the written record pursuant to California Code of Regulations, title 18, section 30209(a).

ISSUES

1. Whether appellants have established reasonable cause to abate the late payment penalty.
2. Whether appellants have established that interest should be abated.

¹ The claims for refund concern only the late payment penalty and interest, which total \$2,314.66 for RJ Paul and \$11,192.95 for Town Center. Because the facts and evidence are essentially identical for both appellants, these appeals have been consolidated pursuant to California Code of Regulations, title 18, section 30212(a).

FACTUAL FINDINGSRJ Paul

1. On March 14, 2022, RJ Paul timely filed a 2021 Partnership Return of Income (Form 565), reporting an annual tax of \$800, a pass-through entity (PTE) elective tax of \$19,397, and total payments of \$19,397.
2. On March 14, 2022, RJ Paul attempted to make a payment of \$19,397 and received a confirmation number in connection with the scheduled payment. However, according to FTB's records, the payment was dishonored with a rejection code indicating "customer advises not authorized."
3. On January 13, 2023, FTB issued a Return Information Notice (Notice) to inform RJ Paul that FTB did not receive any payments for the 2021 tax year. FTB also assessed the late payment penalty, plus interest.²
4. On January 13, 2023, RJ Paul made a payment of \$800, and on April 3, 2023, made a payment of \$22,768.73, in satisfaction of the outstanding balance due for the 2021 tax year.
5. On May 10, 2023, RJ Paul requested a refund of the late payment penalty and interest totaling \$2,314.66, due to reasonable cause.
6. FTB denied the claim for refund.
7. RJ Paul filed this timely appeal.

Town Center

8. On March 11, 2022, Town Center timely filed a 2021 Form 565, reporting an annual tax of \$800, a PTE elective tax of \$96,530, and total payments of \$96,530.
9. On March 14, 2022, Town Center attempted to make a payment of \$96,530 and received a confirmation number in connection with the scheduled payment. However, according to FTB's records, the payment was dishonored with a rejection code indicating "customer advises not authorized."

² The Notice informed RJ Paul that the balance due for the 2021 tax year was \$22,768.73, consisting of the annual tax of \$800, the PTE elective tax of \$19,397, and the late payment penalty of \$2,019.70, plus interest to date of \$552.03.

10. On March 9, 2023, FTB issued a Notice to inform Town Center that FTB did not receive any payments for the 2021 tax year. FTB also assessed the late payment penalty, plus interest.³
11. On April 3, 2023, Town Center made a payment of \$111,489.48, and on May 11, 2023, a payment of \$849.06, in satisfaction of the outstanding balance due for the 2021 tax year.
12. On May 10, 2023, Town Center requested a refund of the late payment penalty and interest totaling \$11,192.95, due to reasonable cause.
13. FTB denied the claim for refund.
14. Town Center filed this timely appeal.

DISCUSSION

Issue 1: Whether appellants have established reasonable cause 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 tax. For tax years beginning on or after January 1, 2021, and before January 1, 2022, the PTE elective tax was due and payable on or before the due date of the original return (without regard to any extension of time for filing the return). (R&TC, § 19904(a)(1).) R&TC section 17935(c) provides that the limited partnership annual tax is due and payable on the date the return is required to be filed under R&TC section 18633. R&TC section 18633(a)(1) provides that every partnership is required to file a return on or before the 15th day of the third month following the close of the taxable year. Therefore, the late payment penalty applies for the year at issue if appellants failed to pay their tax obligations by March 15, 2022.

On appeal, appellants do not dispute that they failed to make timely tax payments for the 2021 tax year. Rather, appellants argue reasonable cause as grounds for abating the penalty. The late payment penalty may be abated if a taxpayer shows that the failure to make a timely payment of tax was due to reasonable cause and not willful neglect. (R&TC, § 19132(a)(1).) To establish reasonable cause for a late payment of tax, a taxpayer 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 taxpayer bears the burden of proving that an ordinarily intelligent and prudent businessperson would have acted

³ The Notice informed Town Center that the balance due for the 2021 tax year was \$111,489.48, consisting of the annual tax of \$800, the PTE elective tax of \$96,530, and the late payment penalty of \$10,706.30, plus interest to date of \$3,453.18.

similarly under the circumstances. (*Ibid.*) The determination of whether reasonable cause exists for the late payment requires an analysis of a taxpayer's actions leading up to the late payment, the timing of those actions, and whether they reflect ordinary business care and prudence. (*Ibid.*) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Ibid.*)

Appellants assert that reasonable cause exists to abate the late payment penalty because they intended to pay the tax obligations by the statutory deadline, as evidenced by payment confirmations they received dated March 14, 2022. However, appellants argue that due to the advanced age and health circumstances of appellants' partners, the confusing PTE elective tax credit, and FTB's delayed notifications, their tax obligations were not satisfied until April 3, 2023. Appellants also point to their good filing history to request abatement of the late payment penalty.

Illness may establish reasonable cause where the taxpayer presents credible and competent proof that the circumstances of the illness prevented compliance with the law. (*Appeal of Triple Crown Baseball LLC*, 2019-OTA-025P.) However, if the difficulties simply caused the taxpayer to sacrifice the timeliness of one aspect of the taxpayer's affairs to pursue other aspects, the taxpayer must bear the consequences of that choice. (*Ibid.*) Here, appellants have not provided any evidence showing that the late payment of tax was due to the illness and advanced age of appellants' partners or how that prevented appellants from taking appropriate steps to confirm their attempted payments were honored by their financial institution. Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Moren, supra.*) Although OTA sympathizes with the age and health conditions described by appellants, the record does not prove that illness prevented appellants from making timely tax payments for the 2021 tax year.

Appellants also assert that the PTE elective tax credit had only recently been enacted when they paid their taxes in 2021 and that there was confusion among taxpayers and tax practitioners as to what the rules were and how to follow them correctly, including how the various penalties would apply. However, ignorance or a misunderstanding of the law generally does not excuse a taxpayer's noncompliance with California tax laws. (*Appeal of Wright Capital Holdings LLC*, 2019-OTA-219P.) Moreover, the record shows appellants attempted to make both PTE elective tax payments on March 14, 2022, before the statutory payment deadline. Appellants' untimely payments were therefore due to their failure to verify that the payments were successful and that the funds were debited from their bank accounts, and not necessarily confusion over the PTE

elective tax credit. A reasonable and prudent businessperson would have confirmed the payments were successful. (*Appeal of Moren, supra.*)

Appellants also contend that FTB delayed in notifying appellants that the scheduled payments were dishonored by their financial institution, which caused the amount of the late payment penalty to increase and additional interest to accrue. However, it is appellants' obligation to pay their tax due by the statutory deadline. (R&TC, §§ 19001, 18633(a)(1), 19904(a)(1).) 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.*) Importantly, both Web Pay confirmations provided by appellants on appeal include the instructions: "To confirm your payment has been cleared, review your bank account statement or contact your bank." Appellants' error in not completing the Web Pay process, and not checking their bank account balance, does not demonstrate due diligence, as would be exercised by an ordinarily intelligent and prudent businessperson. (*Appeal of Friedman, supra.*)

Appellants' final assertion is that they have exemplary records of tax compliance and have never previously made any delinquent tax payments. However, California does not allow first time abatement of the late payment penalty for partnerships based on good filing history. (See *Appeal of Auburn Old Town Gallery, LLC, 2019-OTA-319P.*) Thus, no relief is available on this basis.

As explained above, appellants have failed to establish reasonable cause for the abatement of the late payment penalty.

Issue 2: Whether appellants have established that interest should be abated.

If any amount of tax is not paid by the due date, interest is required to be imposed from the due date until the date the taxes are paid. (R&TC, § 19101(a).) Interest is not a penalty imposed on taxpayers, but is compensation for the taxpayer's use of money after it should have been paid to the state. (*Appeal of GEF Operating, Inc., 2020-OTA-057P.*) There is no reasonable cause exception to the imposition of interest, and interest is mandatory except where abatement is authorized under the law. (*Appeal of Moy, 2019-OTA-057P.*) To obtain relief from interest, a taxpayer must qualify under R&TC section 19104 (unreasonable error or delay by an officer or employee of FTB while performing a ministerial or managerial act), 19112 (extreme financial hardship),⁴ or 21012 (reasonable reliance on FTB's written advice).

⁴ OTA has no authority to review FTB's action under R&TC section 19112. (*Appeal of Moy, supra.*)

On appeal, appellants only provide the same reasonable cause arguments discussed above. Therefore, there is no basis for interest abatement.

HOLDINGS

1. Appellants have failed to establish reasonable cause to abate the late payment penalty.
2. Appellants have failed to establish that interest should be abated.


DISPOSITION

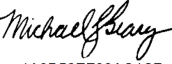
FTB's actions denying appellants' claims for refund are sustained.

DocuSigned by:

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Erica Parker
Hearing Officer

We concur:

Signed by:

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Josh Lambert
Administrative Law Judge

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Michael F. Geary
Administrative Law Judge

Date Issued: 12/17/2024