

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 230713855
A. KESHISHIAN AND)
E. KESHISHIAN)
_____)

OPINION

Representing the Parties:

For Appellants: A. Keshishian
Gerald Brown, CPA
Todd Reznik, CPA

For Respondent: Noel Garcia-Rosenblum, Attorney
Brad Coutinho, Assistant Chief Counsel

S. KIM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, A. Keshishian and E. Keshishian (appellants) appeal an action by the Franchise Tax Board (respondent) denying appellants’ claim for refund of \$22,136.13 for the 2021 tax year.

Office of Tax Appeals (OTA) Panel Members Steven Kim, Erica Parker, and Andrew Wong held a virtual oral hearing for this matter on April 16, 2025. 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).

ISSUES

1. Whether appellants have demonstrated reasonable cause to abate the late payment penalty.
2. Whether appellants have established a basis to abate the underpayment of estimated tax penalty (estimated tax penalty).

FACTUAL FINDINGS

1. Appellants timely filed a joint California Resident Income Tax Return for the 2021 tax year reporting a total amount due of \$240,006, which included a self-assessed estimated tax penalty of \$4,471. Appellants did not remit payment with the tax return.

2. Respondent imposed a late payment penalty of \$17,665.13. On June 22, 2022, respondent issued appellants a notice of balance due for \$256,722.07, which included tax, the late payment penalty, the self-assessed estimated tax penalty, and applicable interest.
3. On September 8, 2022, respondent issued appellants a final notice before levy and lien.
4. On September 14, 2022, appellants made a payment of \$247,554. Subsequently, appellants submitted a letter to respondent requesting abatement of the penalties.
5. Respondent issued appellants a penalty waiver denial letter.
6. On December 5, 2022, appellants made a payment of \$13,624.50. Then, appellants filed a claim for refund based on reasonable cause.
7. On December 23, 2022, appellants paid the remaining balance due of \$136.32.
8. Respondent denied appellants' claim for refund.
9. Appellants timely filed this 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 a tax 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, determined without regard to any extension of time for filing. (R&TC, § 19001.) The late payment penalty may be abated if the taxpayer shows 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).) To establish reasonable cause for the late payment of tax, the taxpayer must show that the failure to make a timely payment occurred despite the exercise of ordinary business care and prudence. (*Appeal of Scanlon*, 2018-OTA-075P.) The taxpayer bears the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Appeal of Triple Crown Baseball LLC*, 2019-OTA-025P.) The taxpayer's standard of proof is by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(b).) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Scanlon*, *supra*.)

Appellants do not dispute the imposition or calculation of the late payment penalty. Instead, appellants argue the late payment penalty should be abated based on reasonable cause. Appellants assert that a payment was scheduled to be made at the same time the return

was filed, but that appellants' representative used an incorrect bank routing number, which resulted in the payment being rejected by respondent. Appellants state that they first learned of the missed payment upon receiving the June 22, 2022 notice from respondent, and that they checked their bank statement at that time but saw another payment of a similar amount had been paid, which they presumed to be the tax payment to respondent. Appellants state that they believed respondent had made a mistake, and did not discover that the payment had been rejected until they received the September 8, 2022 notice. Appellants assert that they paid the tax due within a week of receiving the September 8, 2022 notice. Based on the foregoing, appellants argue that they proactively took immediate steps to correct the error, and thus, have shown reasonable cause to abate the late payment penalty.¹

However, the failure to timely pay tax caused by an oversight does not, by itself, constitute reasonable cause. (*Appeal of Friedman*, 2018-OTA-077P.) Despite appellants' contention that they proactively took steps to correct the error, appellants did not verify the tax payment was successful after filing their tax return or after receiving respondent's first notice, on June 22, 2022. Appellants did not pay the tax due until nearly five months after the payment due date, and after respondent issued the second notice on September 8, 2022. When asked at the oral hearing whether he had checked his bank account to verify whether the payment had gone through in April 2022, appellant A. Keshishian testified that he did not because, "I'm getting older and getting sometimes lazy." Such actions fail to show that appellants exercised ordinary business care and prudence. Accordingly, appellant has not demonstrated reasonable cause to abate the late payment penalty.

Issue 2: Whether appellants have established a basis to abate the estimated tax penalty.

California generally conforms to Internal Revenue Code (IRC) section 6654, and imposes an estimated tax penalty for the failure to timely make estimated income tax payments. (R&TC, § 19136(a); IRC, § 6654.) The estimated tax penalty is similar to an interest charge and applies from the due date of the estimated tax payment until the date it is paid. (IRC, § 6654(b)(2).)

¹ Appellants cite to the nonprecedential OTA Opinion in *Appeal of Gelikman and Fisch*, 2023-OTA-255SCP, wherein OTA found that there was reasonable cause to abate a late payment penalty caused by a mistake in an account number. However, neither the parties in an appeal or OTA can rely upon a nonprecedential OTA opinion. (See Cal. Code Regs., tit. 18, § 30502(b); *Appeal of Aroya Investment I, LLC*, 2020-OTA-255P.) Moreover, in *Appeal of Gelikman and Fisch*, *supra*, although the appellants failed to make a timely payment due to an incorrect bank account number, the appellants reviewed their bank account, quickly ascertained the payment was not made, and took immediate steps to make a payment, before receiving a notice from respondent.

Appellants do not dispute the imposition or computation of the estimated tax penalty. Instead, appellants argue that the estimated tax penalty should be abated based on reasonable cause arguments. However, there is no general reasonable cause exception to the estimated tax penalty. (*Appeal of Scanlon, supra; Appeal of Mazdyasni, 2018-OTA-049P.*) Therefore, appellants have not established a basis to abate the estimated tax penalty.

HOLDINGS

1. Appellants have not demonstrated reasonable cause to abate the late payment penalty.
2. Appellants have not established a basis to abate the estimated tax penalty.

DISPOSITION

Respondent's action is sustained.

DocuSigned by:


5DD7EF644397430...
 Steven Kim
 Administrative Law Judge

We concur:

DocuSigned by:


6651ED7AFC34B4F0...
 Erica Parker
 Hearing Officer

DocuSigned by:


81249DEC8F034E4...
 Andrew Wong
 Administrative Law Judge

For

Date Issued: 6/11/2025