



FACTUAL FINDINGS2021 Tax Year

1. On July 20, 2022, appellants filed a joint Form 540, California Resident Income Tax Return (return), reporting the following: W-2 income; total tax of \$160,234; income tax withholdings of \$30,158; estimated tax and other payments of \$13,372; tax due of \$116,704; a self-assessed estimated tax penalty of \$2,073; and a total balance due of \$118,777. On the date of filing, appellants made a \$5,000 payment on the total balance due.
2. On August 10, 2022, respondent sent appellant a Notice of Tax Return Change – Revised Balance removing the estimated tax and other payments of \$13,372 to reflect its records, resulting in additional unpaid tax, and imposed late payment and estimated tax penalties of \$9,105.32 and \$2,419, respectively plus applicable interest, for a revised total balance due of \$137,850.32.
3. On September 1, 2022, appellants made a \$50,000 payment on the balance due.
4. Respondent then sent appellants an Income Tax Due Notice followed by a Final Notice Before Levy and Lien.<sup>3</sup>
5. Appellants made two separate payments of \$38,000 each on October 25, 2022, and December 23, 2022, respectively.
6. Respondent applied appellants' payments and sent appellants a State Income Tax Balance Due Notice, followed by an Income Tax Due Notice, recalculating a late payment penalty of \$10,852.22 and imposing an estimated tax penalty of \$2,149 and a cost collection fee of \$316, plus applicable interest, for a total balance due as reflected on the latter notice of \$14,896.61.
7. Appellants paid the balance due and sent respondent a letter to request abatement of the late payment and estimated tax penalties.
8. Respondent subsequently sent appellant a Claim For Refund Denied letter and a General Correspondence letter denying appellants' requests to abate the late payment and estimated tax penalties, respectively.
9. This timely appeal followed.

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<sup>3</sup> Respondent's Final Notice Before Levy and Lien, dated October 31, 2022, does not incorporate appellants' October 25, 2022 payment of \$38,000; however, this discrepancy is not material to the issues on appeal here and OTA does not further address it.

2022 Tax Year

10. Appellants had \$25,703 withheld from earnings during the 2022 tax year but made no other timely payments of tax.
11. On May 9, 2023, appellants filed a 2022 joint return, reporting the following: W-2 income; total tax of \$50,676; income tax withholdings of \$25,703; excess SDI (or VPDI) withheld of \$1,131; tax due of \$23,834; a self-assessed estimated tax penalty of \$505; and a balance due of \$24,347. On the following day, appellants made an \$8,000 payment on the balance due.
12. On December 11, 2023, respondent sent appellants a State Income Tax Balance Due Notice, showing tax of \$50,676, payments of \$34,834, and imposing a late payment penalty of \$871.31 and an estimated tax penalty of \$435, plus applicable interest, for a balance due of \$17,230.34.
13. On January 5, 2024, appellants paid the balance due.
14. Appellants then sent respondent a letter to request abatement of the late payment and estimated tax penalties.
15. Respondent sent appellants a Claim for Refund Denied letter<sup>4</sup> and a General Correspondence letter denying appellants' requests to abate the late payment and estimated tax penalties, respectively.
16. This timely appeal followed.

DISCUSSIONIssue 1: Whether appellants have established reasonable cause for the late payment of tax for the 2021 and 2022 tax years.

R&TC section 19001 provides that the personal income tax “shall be paid at the time and place fixed for filing the return (determined without regard to any extension of time for filing the return).” R&TC section 19132 provides that a late payment penalty shall be imposed when a taxpayer fails to pay the amount shown as due on the return on or before the due date of the return. The late payment penalty has two parts. The first part is 0.5 percent of the unpaid tax. (R&TC, § 19132(a)(2)(A).) The second part is a penalty of 0.5 percent per month, or portion of a month (not to exceed 40 months), calculated on the unpaid tax. (R&TC, § 19132(a)(2)(B).)

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<sup>4</sup> The Claim For Refund Denied letter recalculated a late filing penalty of \$950.52, which is a \$79.01 increase from the late filing penalty stated in respondent's December 11, 2023 State Income Tax Balance Due Notice, and reflects the increase in the monthly portion of the late penalty calculated from December 11, 2023, through January 5, 2024, when appellants paid the entire balance due.

Here the parties do not dispute that for the 2021 tax year, appellants failed to timely pay tax in the amount of \$130,076<sup>5</sup> and respondent properly calculated and imposed the late payment penalty.<sup>6</sup> For the 2022 tax year, the parties do not dispute that appellants untimely paid tax due of \$15,842 after the November 16, 2023 postponed deadline<sup>7</sup> and respondent properly calculated and imposed the late payment penalty. Appellants instead argue reasonable cause for the abatement of the late payment penalty for both years at issue.

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 due to willful neglect. (R&TC, § 19132(a).) 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 Scanlon*, 2018-OTA-075P.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Ibid.*)

Appellants present two reasonable cause type arguments for the abatement of the late payment penalty. Appellants first argue that the COVID-19 pandemic caused closures of their family owned business, resulting in financial losses to appellants, and their business was further negatively impacted by health issues experienced by the business's CFO and a problematic interaction with a former business contractor; and that appellants experienced severe health issues between 2018 and early 2022, which took a considerable toll on their well-being and capacity to manage their tax responsibilities. In support of this argument, appellants provide medical records for themselves and their child demonstrating the diagnoses and treatments that they received for various health issues between 2018 and 2022.

To address appellants' first argument, appellants have not provided cancelled invoices, business entity returns, bank records, or any other information to prove appellants' family business sustained a loss, or if so, the extent to which it affected appellants' ability to timely pay

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<sup>5</sup> Appellant's unpaid tax is calculated as the sum of reported total tax of \$160,234 minus withholdings of \$30,158, which equals \$130,076.

<sup>6</sup> Appellants made late payments of \$5,000 on July 20, 2022, \$50,000 on September 1, 2022, \$38,000 on October 25, 2022, and \$38,000 on December 23, 2022. Following receipt of each payment, respondent recalculated the late payment penalty as the product of 0.5 percent of the current unpaid tax. (R&TC, § 19132(a)(2)(B).)

<sup>7</sup> In a news release, respondent stated that it conformed to IR-2023-189, which extended the federal deadline for those affected by the 2023 California winter storms to November 16, 2023. (See [www.ftb.ca.gov/about-ftb/newsroom/news-releases/10-16-extended-tax-deadline.html](http://www.ftb.ca.gov/about-ftb/newsroom/news-releases/10-16-extended-tax-deadline.html); see also [www.ftb.ca.gov/about-ftb/newsroom/news-releases/2023-10-due-date-for-tax-returns-payments-moved.html](http://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2023-10-due-date-for-tax-returns-payments-moved.html); *Appeal of Pomrehn*, 2025-OTA-269P.)

their tax. Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof. (*Appeal of Scanlon, supra.*)

With respect to appellants' second argument, illness may establish reasonable cause where the taxpayer presents 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, inability to pay the tax due to financial hardship may also establish reasonable cause to abate the late payment penalty. (*Ibid.*) However, if the difficulties simply cause 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 provide medical records that credibly support the various health issues that appellants experienced prior to the due date for payment of tax. However, appellants continued to operate their business despite their unfortunate health issues and reported W-2 income in the 2021 and 2022 tax years, respectively. Thus, based upon the record in this appeal, the difficulties that appellants experienced as a result of their health issues caused them to sacrifice the timeliness of one aspect of their affairs (i.e., timely paying taxes) to pursue others, and appellants must bear the consequences of that choice.

For the reasons stated above, appellants have not established reasonable cause to abate the late payment penalties.

Issue 2: Whether appellants have shown that the estimated tax penalties for the 2021 and 2022 tax years should be abated.

California 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 in that it is calculated by applying the applicable interest rate to the underpayment of estimated tax. (See IRC, § 6654(b)(2).) The estimated tax penalty is mandatory unless the taxpayers establish that a statutory exception applies.<sup>8</sup> (*Appeal of Johnson, 2018-OTA-119P.*)

Appellants do not contest that the estimated tax penalty was properly imposed or computed. Instead, appellants make the same reasonable cause type arguments to abate the

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<sup>8</sup> Under IRC section 6654(e)(3)(A), the IRS (or here, respondent) may waive the addition to tax, i.e., estimated tax penalty, if it determines that, "by reason of casualty, disaster, or other unusual circumstances the imposition of such addition to tax would be against equity and good conscience." Second, under IRC section 6654(e)(3)(B), the addition to tax may be waived if the IRS (or here, respondent) determines that (i) during the applicable tax year or the preceding tax year, the taxpayer either retired after having attained age 62, or became disabled, and (ii) the underpayment was due to reasonable cause and not due to willful neglect. However, appellants do not argue or provide information to prove that these exceptions apply.

estimated tax penalty as they do for the late payment penalty. However, unlike the late payment penalty, there is no authority to abate the estimated tax penalty based solely on reasonable cause. (See *Appeal of Scanlon, supra.*) Accordingly, appellants have failed to show that the estimated tax penalties should be abated.

HOLDINGS

1. Appellants have not established reasonable cause for the late payment of tax for the 2021 and 2022 tax years.
2. Appellants have not shown that the estimated tax penalties for the 2021 and 2022 tax years should be abated.

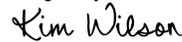
DISPOSITION

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

Signed by:  
  
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 Seth Elsom  
 Hearing Officer

We concur:

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 John O. Johnson  
 Administrative Law Judge

Signed by:  
  
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 Kim Wilson  
 Hearing Officer

Date Issued: 11/10/2025