

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
S. TAYLOR AND)
B. TAYLOR)
)
)
)
)

OTA Case No. 220510342

OPINION

Representing the Parties:

For Appellants: S. Taylor and B. Taylor

For Respondent: Sarah J. Fassett, Attorney

For Office of Tax Appeals: Andrea L.H. Long, Attorney Supervisor

S. ELSOM, Hearing Officer: Pursuant to Revenue and Taxation Code (R&TC) section 19324, S. Taylor and B. Taylor (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants' claim for refund of \$14,152.07 for the 2019 tax year.¹

Appellants waived the right 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 the late payment penalty was properly imposed; if so, whether appellants have established reasonable cause to abate the late payment penalty.
2. Whether appellants are entitled to a waiver of the underpayment of estimated tax penalty (estimated tax penalty).

¹ Although appellants filed a claim for refund of \$14,152.07 and FTB denied a refund of the same amount, FTB states that the following amounts are at issue: late payment penalty of \$9,158.33, underpayment of estimated tax penalty of \$4,111, interest of \$2,886.45, and collection cost recovery fee of \$316. However, appellants only assert arguments related to the timeliness of their September 21, 2021 payment. Therefore, OTA will not address the imposition of the collection cost recovery fee and accrual of interest; OTA will abate these items if the underlying liabilities are abated.

FACTUAL FINDINGS

1. S. Taylor is the sole shareholder in Taylor & Taylor Ltd. (Taylor & Taylor), an S corporation incorporated in New York. On March 14, 2020, Taylor & Taylor filed a 2019 California S Corporation Franchise or Income Tax Return (Form 100) that indicated on Schedule K-1 that withholding credits of \$122,111 were allocated to its shareholder, S. Taylor. The Form 100 reported estimated tax payments of \$8,952, which did not include the withholdings reported on Schedule K-1, and tax due of \$18,427. Taylor & Taylor remitted a payment of \$18,893 with its Form 100.
2. On June 3, 2020, appellants timely filed a joint 2019 California Nonresident or Part-Year Resident Income Tax Return (return).² Appellants reported a total tax of \$218,720, California income tax withholdings of \$122,156, estimated tax payments of \$91,500, and a total amount due of \$5,064. On July 10, 2020, appellants remitted a payment of \$5,064.
3. On October 10, 2020, FTB issued a Notice of Tax Return Change – Revised Balance to notify appellants that it adjusted their return. FTB reduced the reported withholdings by \$122,111, and imposed an estimated tax penalty of \$4,111, plus applicable interest, which resulted in a revised balance due of \$127,530.61.
4. On October 15, 2020, Taylor & Taylor remitted to FTB a payment of \$127,530.61, which was designated by FTB as a “bill.” However, Taylor & Taylor’s 2019 tax year account indicated that there was no balance due when FTB received the payment. As a result, on October 30, 2020, FTB refunded the full amount of the payment to Taylor & Taylor.
5. FTB received no response to the Notice of Tax Return Change – Revised Balance and issued a State Income Tax Balance Due Notice on November 12, 2020, which imposed the late payment penalty.
6. On December 8, 2020, and September 21, 2021, appellants remitted payments to FTB, fully satisfying their 2019 account balance.
7. Appellants filed a claim for refund, which FTB denied.
8. This timely appeal followed.

² Although individual income tax returns are generally due on April 15 of the following tax year, California allows an automatic extension to file a return within six months of the original due date. No written request is required, and the granting of the extension is conditioned solely on the filing of a return within the automatic extension period. (R&TC, § 18567(a)(1); Cal. Code Regs., tit. 18, § 18567(a).)

DISCUSSION

Issue 1: Whether the late payment penalty was properly imposed; if so, 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 on or before the return due date. Generally, a tax payment is due on the return due date (without regard to extensions of time for filing). (R&TC, § 19001.) The penalty is five percent of the initial underpaid tax amount plus one-half of one percent of the outstanding liability for each subsequent month for a maximum of 40 months. (R&TC, § 19132.) For the 2019 tax year, FTB postponed the filing and payment due date from April 15, 2020, to July 15, 2020.³

Withholding is required on the receipt or payment of certain fixed or determinable income items to ensure the collection of tax. (R&TC, § 18662). The amount withheld is credited to the tax for the year in which the withholding occurred. (R&TC, § 19002(a).) Withholdings are deemed paid on the last day prescribed for filing the return. (R&TC, § 19002(c)(1).) If the tax has actually been withheld at the source, a credit or refund will be made even though the tax has not been paid over to FTB. (Cal. Code Regs., tit. 18, § 19002(a).)

OTA's precedential opinion, *Appeal of Carr*, 2022-OTA-157P, considered whether a taxpayer who held the dual role of employee and president/CEO of a corporation responsible for remitting payroll taxes was entitled to income tax withholding credits. OTA applied the functional control test, which evaluates whether funds allegedly withheld for taxes left the taxpayer's control. OTA concluded that appellant Carr did not provide sufficient evidence to prove withholdings left his functional control as CEO. Accordingly, OTA held that despite the funds being technically withheld by the corporation, he was not entitled to claim them as withholdings.

Here, appellants argue that FTB improperly imposed the late payment penalty because appellants reported California income tax withholdings of \$122,111, which is the amount listed on the Schedule K-1 that Taylor & Taylor issued to appellant S. Taylor. Appellants argue that FTB's failure to accept Taylor & Taylor's October 15, 2020 payment of \$127,530.61 as a withholding credit caused the penalty to be imposed. Appellants further contend that if FTB had

³ In response to the COVID-19 pandemic, FTB postponed the filing and payment deadlines for the 2019 tax year from April 15, 2020, to July 15, 2020. (See <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2020-3-state-postpones-tax-deadlines-until-july-15-due-to-the-covid-19-pandemic.html>.)

accepted Taylor & Taylor's payment, then the credit on appellants' 2019 account would have satisfied their 2019 tax liability.

Appellants do not provide any evidence to prove, nor does the record in this appeal demonstrate that Taylor & Taylor withheld any funds at source by July 15, 2020, as reported on Taylor & Taylor's Schedule K-1 issued to S. Taylor. Further, like *Appeal of Carr, supra*, appellants fail to show that the funds they assert Taylor & Taylor withheld functionally left S. Taylor's control. In the appeal under consideration, Taylor & Taylor did not attempt to remit California income tax withholdings to FTB until FTB notified S. Taylor in his individual capacity, and he later attempted to remit the withholding as Taylor & Taylor's sole shareholder. This shows S. Taylor's functional control and authority over Taylor & Taylor's tax decisions, which differs from a rank-and-file employee, who would have less influence. Accordingly, the Taylor & Taylor withholding credits cannot be deemed paid on the return due date under R&TC section 19002(c)(1).

FTB also properly calculated a late payment penalty under R&TC § 19132 of \$9,158.33, which is the sum of five percent of the total tax due, or \$6,105.55 ($\$122,011 \times .05$), plus one half of one percent of each month or fraction of a month that the payment is late, or \$3,052.78 ($\$122,011 \times .005 \times 5$).⁴ Appellants assert that FTB should have accepted Taylor & Taylor's remittance of \$127,530.61 on October 15, 2020. FTB counters that the payment did not indicate that it was designated as a withholding payment nor did appellants provide any of the required withholding forms. Appellants have not provided any argument or evidence to address these assertions. Accordingly, OTA finds that FTB correctly calculated the penalty up to the date appellants remitted the additional tax due on December 8, 2020. As a result, FTB properly imposed the late payment penalty.

The late payment penalty may be abated if the taxpayer establishes that the failure to make a timely tax payment was due to reasonable cause and not willful neglect. (R&TC, § 19132(a)(1).) To demonstrate reasonable cause, the taxpayer must show that the late payment occurred despite the exercise of ordinary business care and prudence. (*Appeal of Scanlon*, 2018-OTA-075P.) Unsupported assertions are insufficient to satisfy the taxpayer's burden of proof. (*Appeal of Moren*, 2019-OTA-176P.)

Appellants assert that they have consistently overpaid the California taxes due. Appellants also request reasonable cause abatement based on their good compliance history regarding overpayment of their California taxes. However, while the IRS has a penalty

⁴ Appellant's July 10, 2020 payment of \$5,064 was timely under respondent's postponement of the payment deadline to July 15, 2020. See footnote 3 above.

abatement program called First Time Abate, neither the California Legislature nor respondent adopted a comparable penalty abatement program for the 2019 tax year at issue. Thus, no relief is available on this basis.⁵ The touchstone for OTA's analysis of reasonable cause is whether appellants' late payment occurred despite their exercise of ordinary business care and prudence for the tax year at issue. Here, appellants argue that Taylor & Taylor properly remitted the withholdings (claimed by appellants) on October 15, 2020, and appear to argue further that if accepted by respondent, the payment would have been timely. However, the date of this payment is three months after the July 15, 2020 deadline for appellants' payment of tax.⁶ Additionally, appellants do not provide correspondence with FTB, attempt to correct the withholding form errors, and did not make any attempt to remit payment of the tax due after FTB refunded this payment to Taylor & Taylor on November 30, 2020, through December 8, 2020, when appellants paid the remaining balance of their tax due. Consequently, appellants have failed to establish reasonable cause to abate the late payment penalty for the 2019 tax year.

Issue 2: Whether appellants are entitled to a waiver of the estimated tax penalty.

California imposes an estimated tax penalty for the failure to timely make estimated income tax payments. (R&TC, § 19136; IRC, § 6654(e).) The estimated tax penalty is like an interest charge in that the applicable interest rate is used to calculate the penalty. (See IRC, § 6654(a); R&TC, § 19136(b).) The estimated tax penalty is mandatory unless the taxpayer establishes that a statutory exception applies. (*Appeal of Johnson*, 2018-OTA-119P.)

Appellants make the same reasonable cause argument as provided 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. (*Appeal of Johnson, supra.*)⁷ Therefore, the estimated tax penalty cannot be abated.

⁵ R&TC section 19132.5, effective for tax years beginning on or after January 1, 2022, allows a taxpayer to request a one-time abatement of a timeliness penalty. This provision is inapplicable to the 2019 tax year at issue.

⁶ Appellants appear to confuse the extension period for filing a return with the payment due date. Under R&TC section 18567(b), an extension of time to file a return is not an extension of the due date for the payment of tax.

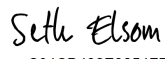
⁷ There are a few limited exceptions to the penalty (see IRC, § 6654(e)), but appellants do not raise any of them here.

HOLDINGS


1. The late payment penalty was properly imposed, and appellants have not established reasonable cause to abate it.
2. Appellants are not entitled to a waiver of the estimated tax penalty.


DISPOSITION

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

Signed by:

C04CD432E3254FD...
 Seth Elsom
 Hearing Officer

We concur:

DocuSigned by:

6651E0AAC34B4F6...
 Erica Parker
 Hearing Officer

Signed by:

32D46B0C49C049F...
 Veronica I. Long
 Administrative Law Judge

Date Issued: 1/29/2026