

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:

LYDIA PARHAM-BROWN

) OTA Case No. 18011046

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) Date Issued: March 16, 2018

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OPINION

Representing the Parties:

For Appellant:

Lydia Parham-Brown

For Respondent:

Eric A. Yadao, Tax Counsel III

For Office of Tax Appeals:

Neha Garner, Tax Counsel III

J. JOHNSON, Administrative Law Judge: Pursuant to California Revenue and Taxation Code (R&TC) section 19324, Lydia Parham-Brown (appellant) appeals an action by the Franchise Tax Board (FTB or respondent) in denying appellant's claim for refund in the amount of \$236.33¹ for the 2015 tax year.

Appellant waived her right to an oral hearing, and, therefore, the matter is being decided based on the written record.

ISSUES

1. Has appellant shown reasonable cause for her failure to make a timely payment of tax?
2. Has appellant shown that the underpayment of estimated tax penalty should be abated?
3. Has appellant shown that she is otherwise entitled to a refund of taxes and interest paid?

¹ As discussed in the Factual Findings below, appellant's claim for refund is based on a letter sent to respondent prior to payment of her tax and penalties requesting abatement of the penalties. Once appellant completed payment of her outstanding liability for the 2015 tax year, the penalty amount paid equaled \$236.33. Respondent then treated appellant's letter as a perfected claim for refund and denied appellant's claim. (See Rev. & Tax. Code, § 19322.1) On appeal, appellant, for the first time, also requested a refund of half of her \$2,613.73 "tax bill" (i.e., the Notice of State Income Tax Due issued on May 26, 2016, discussed below).

FACTUAL FINDINGS

1. Appellant filed her California income tax return for the 2015 tax year on April 12, 2016. The return reported an unpaid tax due of \$2,414, plus an estimated tax penalty of \$46, for a reported total amount due of \$2,460. Appellant did not remit a payment for the amount due with her return.
2. Respondent issued a Notice of State Income Tax Due to appellant on May 26, 2016. This notice reported an amount due equal to the unpaid tax liability of \$2,414.00, plus a combined penalty amount of \$191.05,² and interest up to that date.
3. Appellant requested an installment payment agreement on June 29, 2016, which respondent accepted on September 1, 2016.
4. On July 6, 2016, while waiting for acceptance of her installment payment request, appellant requested abatement of the \$191.05 in penalties under the assertion that she did not have enough funds to pay the estimated tax.
5. Once appellant completed payment of the balance due on October 10, 2016,³ respondent treated appellant's July 6, 2016 letter as a perfected claim for refund.
6. Respondent issued a letter to appellant denying her claim for refund on November 18, 2016. Appellant filed this timely appeal in response.

DISCUSSION

Issue 1 - Has appellant shown reasonable cause for her failure to make a timely payment of tax?

R&TC section 19001 generally provides that the personal income tax imposed "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 is 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 calculated as five percent of the unpaid tax. (Rev. & Tax. Code, § 19132, subd. (a)(2)(A).) The second part

² The penalties consisted of an estimated tax penalty in the amount of \$46.21, and a late payment penalty comprised of a five percent portion equal to \$120.70 and an accruing one-half of one percent monthly portion, which at that time of the notice was equal to \$24.14 (i.e., two months' worth). As discussed below, the late payment penalty calculations are based on the unpaid tax liability.

³ At the time of payment, the monthly portion of the late payment penalty was equal to \$69.42, for a combined penalty total of \$236.33; i.e., \$46.21 (estimated tax penalty) + \$120.70 (five percent late payment penalty portion) + \$69.42 (late payment penalty monthly portion).

is calculated as one-half of one percent per month, or portion of a month, calculated based on the outstanding balance. (Rev. & Tax. Code, § 19132, subd. (a)(2)(B).) The late payment penalty may be abated if the taxpayer can show that the failure to make a timely payment of tax was due to reasonable cause and was not due to willful neglect. (Rev. & Tax. Code, § 19132, subd. (a).) The taxpayer bears the burden of proving that both conditions existed. (*Appeal of Roger W. Sleight*, 83-SBE-244, Oct. 26, 1983.)

To establish reasonable cause for the late payment of tax, a taxpayer must show that her failure to make a timely payment of the proper amount of tax occurred despite the exercise of ordinary business care and prudence. (*Appeal of Roger W. Sleight*, 83-SBE-244, *supra*; *Appeal of Robert T. and M.R. Curry*, 86-SBE-048, Mar. 4, 1986.) The taxpayer bears the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Ibid*; see also *Appeal of M.B. and G.M. Scott*, 82-SBE-249, Oct. 14, 1982.) A failure to pay will be considered due to reasonable cause if the taxpayer makes a satisfactory showing that she exercised ordinary business care and prudence in providing for the payment of her tax liability and was nevertheless either unable to pay the tax or would suffer undue hardship if she paid on the due date. (Treas. Reg. § 301.6651-1(c)(1); *Nasir v. Comm'r*, T.C. Memo. 2011-283.) An undue hardship means more than an inconvenience, and instead it must appear that substantial financial loss will result to the taxpayer for making the payment on the due date, such as loss due to selling property at a sacrifice price. (Treas. Reg. § 1.6161-1(b).) 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 J. Ray Risser*, 84-SBE-044, Feb. 28, 1984.)

Appellant discusses the loss of her mother in early 2014, and the effects that had on her personally, including the responsibilities of emptying her mother's home and preparing for the memorial, and the loss of focus on her everyday practical matters due to overwhelming sadness. Appellant also mentions a move from New Hampshire to California. While we sympathize with appellant's loss and the asserted impact the related events had on her focus, this event occurred more than two years prior to the 2015 tax year payment deadline of April 15, 2016, and these events, as presented by appellant, do not show that she was unable to timely pay her tax liability or that she would suffer undue hardship if she did pay timely. The loss of focus on everyday practical matters, such as remitting tax timely, does not constitute reasonable cause.

Therefore, we conclude that appellant's failure to timely pay her 2015 tax liability was not due to reasonable cause.

Issue 2 - Has appellant shown that the underpayment of estimated tax penalty should be abated?

R&TC section 19136, subdivision (a), incorporates by reference Internal Revenue Code (IRC) section 6654, except as otherwise provided. IRC section 6654(a) imposes a penalty for the underpayment of estimated tax where an individual taxpayer's installment payments are less than the amounts due at the end of the installment periods. This penalty is equal to the adjusted annual interest due on late payments. There is no general reasonable cause exception for the underpayment of the estimated tax penalty. Instead, IRC section 6654(e)(3)(a) provides a limited exception to the imposition of the penalty if, by reason of casualty, disaster, or other unusual circumstances, the imposition of the penalty would be against equity and good conscience.⁴

The factors listed by appellant as impacting her ability to timely attend to her tax obligations appear to all have happened prior to the tax year at issue. Appellant has not provided any evidence of casualty, disaster, or other unusual circumstances affecting her ability to pay estimated tax payments, as would support a finding that the limited exceptions of IRC section 6654(e)(3) apply to this appeal. Accordingly, appellant has not demonstrated that she is entitled to an abatement of the estimated tax penalty.

Issue 3 - Has appellant shown that she is otherwise entitled to a refund of taxes and interest paid?

This action is brought before us as an appeal of respondent's denial of appellant's claim for refund of penalty amounts. However, on appeal, appellant also requests a refund of "half of the principle balance" as shown on the Notice of State Income Tax Due issued on May 26, 2016, which at the time totaled \$2,613.73 and included tax and interest. Appellant therefore appears to request on appeal a refund of \$1,306.86, either including or in excess of the \$236.33 penalties amount.

R&TC section 19322 provides that a refund claim must set forth the specific grounds upon which a refund is claimed, and section 19324 provides this tribunal with the authority to

⁴ IRC section 6654(e)(3) also provides for the abatement of the penalty if the late payment was due to reasonable cause, but only for individuals who retired after attaining the age of 62 in the taxable year or who became disabled in the taxable year. Neither of these conditions are shown to be present here.

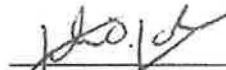
review respondent's action on that refund claim. (See also Cal. Code Regs., tit. 18, § 19322, subd. (a).) Appellant's refund claim at issue in this appeal is based on her July 6, 2016 letter requesting an abatement of the penalty amounts, and there is no denied claim for refund for the tax or interest amounts on appeal here. Regardless, appellant's assertions and submitted documents do not support a finding that she is entitled to a refund of any tax or interest paid.

HOLDINGS

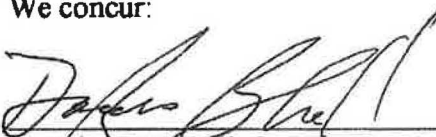
1. Appellant has not established that her failure to make a timely payment of tax for the 2015 tax year was due to reasonable cause and not willful neglect.
2. Appellant has not established that the underpayment of estimated tax penalty should be abated.
3. Appellant has not shown that she is otherwise entitled to a refund of taxes and interest paid for the 2015 tax year.


DISPOSITION

Respondent's action in denying appellant's claim for refund is sustained.


John O. Johnson
Administrative Law Judge

We concur:


Douglas Bramhall
Administrative Law Judge


Alberto T. Rosas
Administrative Law Judge