

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 18011174
)
JOSEPH RAMELLI AND) Date Issued: August 8, 2018
)
GELILA TEKA)
_____)

OPINION

Representing the Parties:

For Appellants: Joseph Ramelli and Gelila Teka

For Respondent: Parviz T. Iranpour, Tax Counsel

A. ROSAS, Administrative Law Judge: Joseph Ramelli and Gelila Teka (“Appellants”) appeal an action by the Franchise Tax Board (“FTB” or “Respondent”) pursuant to California Revenue and Taxation Code section 19324.¹ Appellants appeal the denial of their claim for refund in the sum of \$864.79, which consists of a late payment penalty and interest for their 2014 tax year.

Appellants waived their right to an oral hearing, and therefore we decide this matter based on the written record.

ISSUES

1. Have Appellants established that their failure to make timely payment of their 2014 California income tax liability was due to reasonable cause and not willful neglect?
2. Have Appellants established that they qualify for interest abatement?

¹ Subsequent statutory references are to sections of the California Revenue and Taxation Code, unless otherwise indicated.

FACTUAL FINDINGS

1. In 2014, while residents of California, Appellants earned wages and business income totaling over \$150,000. California income taxes of \$801 were withheld from their wages.
2. Appellants filed their 2014 California tax return on September 21, 2015. They reported \$153,865 in California adjusted gross income and a California tax liability of \$6,305. They reported an unpaid tax liability of \$5,504 ($\$6,305 - \$801 = \$5,504$).
3. On October 15, 2015, Appellants paid \$25 towards their unpaid tax liability. Later that month, Appellants entered into an installment payment agreement with FTB.
4. On March 24, 2017, Appellants sent FTB a letter requesting abatement of penalties and interest, which FTB treated as a claim for refund. Approximately two weeks later, prior to FTB's response, Appellants made a final payment of \$4,982.51 to FTB, which covered all the remaining unpaid taxes, penalties, and interest due for the 2014 tax year.
5. On June 21, 2017, FTB denied Appellants' claim for refund.
6. Appellants filed a timely appeal on or about July 14, 2017.²

DISCUSSION

Issue 1 - Have Appellants established that their failure to make timely payment of their 2014 California income tax was due to reasonable cause and not willful neglect?

An FTB determination is presumed correct and a taxpayer has the burden of proving it to be erroneous. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509, 514.) FTB allows an automatic six-month extension to file a California tax return if the return is filed within six months of the original due date. (§ 18567(a).) An extension of time to file a tax return, however, is not an extension of time to pay; the tax is still due on the original due date of the return without regard to the extension to file. (§ 18567(b).) The law requires FTB to impose a penalty for the late payment of tax when a taxpayer fails to pay the amount of tax due by the due date, unless the taxpayer establishes that the late payment was due to reasonable cause and not willful neglect. (§ 19132.)

Although Appellants filed their 2014 California return within the automatic six-month extension period, other than the 2014 wage withholdings of \$801, Appellants did not pay their remaining 2014 California tax liability of \$5,504 by the due date of April 15, 2015. The burden

² Appellants filed this appeal with the Office of Tax Appeals' predecessor, the State Board of Equalization.

of proof is on the taxpayer to show reasonable cause exists to support abatement of the late payment penalty. (*Appeal of Roger W. Sleight*, 83-SBE-244, Oct. 26, 1983.) In order to establish reasonable cause for the late payment, a taxpayer must show that the failure to timely pay the amount due occurred despite the exercise of ordinary business care and prudence. (*Ibid.*) The taxpayer's reason for failing to make timely payment of the tax due must be such that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Appeal of Robert T. and M.R. Curry*, 86-SBE-048, March 4, 1986.) Here, Appellants' evidence does not establish that the failure to timely pay the amount of tax due occurred despite the exercise of ordinary business care and prudence.

Appellants attempt to show reasonable cause for the late payment by focusing entirely upon their claim of financial hardship. California looks to the Treasury Regulations under Internal Revenue Code section 6161 on the issue of financial hardship. Those regulations provide, in part, as follows:

An extension of the time for payment shall be granted only upon a satisfactory showing that payment on the due date of the amount with respect to which the extension is desired will result in an undue hardship. The extension will not be granted upon a general statement of hardship. The term "undue hardship" means more than an inconvenience to the taxpayer. It must appear that substantial financial loss, for example, loss due to the sale of property at a sacrifice price, will result to the taxpayer for making payment on the due date of the amount with respect to which the extension is desired.

(Treas. Reg. § 1.6161-1(b).)

Here, although Appellants make a claim of financial hardship, they have not offered any evidence to support their claim. They have not provided any documentation regarding their financial circumstances at the time their tax payments were due (April 2015), or as to how they arrived at those circumstances. Appellants only presented a general statement of hardship and a statement that in March of 2017 they "were able to take a loan and pay" off the remaining balance due on their 2014 liability. However, the focus here is upon Appellants' financial circumstances at the time their tax payment was due in April of 2015, and Appellants have not shown the facts and circumstances concerning their financial situation at that time. Therefore, Appellants have not established that their failure to timely pay their tax when due was attributable to reasonable cause and not willful neglect.

Issue 2 - Have Appellants established that they qualify for interest abatement?

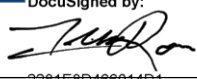
If a taxpayer does not pay the tax by the original due date, or if FTB assesses additional tax and the assessment becomes due and payable, the law provides for the charging of interest on the balance due, compounded daily. (§ 19101.) FTB’s imposition of interest is mandatory, and FTB is not allowed to abate interest except where authorized by law. (*Appeal of Amy M. Yamachi*, 77-SBE-095, June 28, 1977.) Interest is not a penalty; it is compensation for the use of money. (*Appeal of Audrey C. Jaegle*, 76-SBE-070, June 22, 1976.) Several statutory provisions permit taxpayers to obtain interest abatement in narrowly circumscribed situations. (See, e.g., §§ 19104, 19112, and 21012.) Here, however, Appellants failed to show that they qualify under the provisions of any of these statutes. Accordingly, Appellants have not established any basis for abating interest.

HOLDINGS


1. Appellants have not established that their failure to timely pay their 2014 California income tax by April 15, 2015, was due to reasonable cause and not willful neglect.
2. Appellants have not established that they qualify for interest abatement.


DISPOSITION

Respondent’s action in denying Appellants’ claim for refund is sustained in full.

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 Alberto T. Rosas
 Administrative Law Judge

We concur:

DocuSigned by:

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 Linda C. Cheng
 Administrative Law Judge

DocuSigned by:

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 John O. Johnson
 Administrative Law Judge