

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18011219
)
ROBIN MANSFIELD (DECEASED) AND) Date Issued: February 22, 2018
)
BARBARA MANSFIELD)
)
_____)

OPINION

Representing the Parties:

For Appellants: James F. Butera, CPA

For Respondent: Meghan McEvelly, Tax Counsel III

For Office of Tax Appeals: Tom Hudson, Tax Counsel III

T. STANLEY, Administrative Law Judge: Pursuant to California Revenue and Taxation Code (R&TC) section 19324,¹ Robin Mansfield (deceased) and Barbara Mansfield (appellants) appeal an action by the Franchise Tax Board (FTB or respondent) in denying appellants' claim for refund in the amount of \$20,554 for the 2015 tax year.

Appellants waived their right to an oral hearing; therefore, this matter is being decided based on the written record.

ISSUE

The issue presented in this appeal is whether appellants have shown that their late payment of tax for the 2015 tax year was due to reasonable cause and not due to willful neglect.

FACTUAL FINDINGS

1. Appellants filed a timely joint 2015 California income tax return (Form 540) on October 12, 2016, reporting federal adjusted gross income (AGI) of \$4,635,897 and a reported total tax of \$573,870.

¹ Unless otherwise indicated, all "Section" references are to sections of the California Revenue and Taxation Code.

2. After applying estimated tax payments of \$45,000 and withholding credits of \$271,950, appellants reported tax due of \$256,920.
3. Appellants self-reported interest and a late payment penalty of \$24,631, and an estimated tax penalty of \$4,186.
4. Appellants' return after payments and credits shows a total balance due of \$285,737, which appellants remitted with their return.
5. On October 24, 2016, respondent issued a Notice of Tax Change to appellants, notifying them that the late payment penalty had been revised to \$20,553.60 (from the \$24,631.00 reported by appellants, including interest) and the estimated tax penalty had been revised to \$4,186.91 (from the \$4,186.00 reported by appellants). After recomputing and adding the applicable interest of \$3,818.57, the notice indicated an overpayment of \$257.92 would be refunded to appellants.
6. Appellants protested on November 2, 2016, submitting a claim for refund on FTB Form 2917 (Reasonable Cause - Individual and Fiduciary Claim for Refund).
7. It was unrefuted that, prior to tax year 2015, appellants have always paid their income taxes by the original due date.
8. During the first quarter of 2015, Appellants received a letter from Christopher Cole, the Trustee of the Joyce K. Schaeffer Irrevocable Trust, which provided an estimate of the taxable income to the beneficiaries of the trust.
9. Appellants received a Schedule K-1 along with a letter dated September 9, 2016, from Christopher Cole, the Trustee of the Joyce K. Schaeffer Irrevocable Trust, showing their actual share of taxable income for 2015.
10. Appellants were denied a claim for refund of \$20,554 in a letter from FTB dated December 16, 2016.
11. Appellants filed this appeal within the allowable time limits.

DISCUSSION

With respect to appellants' claim for refund of a late payment penalty, 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 5 percent of the unpaid tax. (Rev. & Tax. Code, § 19132, subd. (a)(2)(A).) The second part is a penalty of 0.5 percent per month, or portion

thereof, calculated on the outstanding balance. (Rev. & Tax. Code, § 19132, subd. (a)(2)(B).) The aggregate amount of the penalty may not exceed 25 percent of the total unpaid tax. (Rev. & Tax. Code, § 19132, subd. (a)(3).) Here, the penalty amount appears to have been properly calculated, and appellants have not disputed the amount or the calculation method.

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 a reasonable cause and was not due to willful neglect. (Rev. & Tax. Code, § 19132, subd. (a)(1).) Reasonable cause exists if it can be shown that the taxpayer acted as an ordinarily intelligent and prudent businessperson would have acted under similar circumstances. (*Appeal of Howard G. and Mary Tons*, 79-SBE-027, Jan. 9, 1979.) When respondent imposes a penalty for the late payment of tax, the law presumes that the penalty was imposed correctly. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509; *Appeal of Michael E. Myers*, 2001-SBE-001, May 31, 2001.) The burden of proof is on the taxpayer to show that the failure to make a timely payment was the result of reasonable cause and not due to willful neglect, and the late payment occurred despite the exercise of ordinary business care and prudence. (*Appeal of Roger W. Sleight*, 83-SBE-244, Oct. 26, 1983; *Appeal of M.B. and G.M. Scott*, 82-SBE-249, Oct. 14, 1982.)

Some examples of circumstances that have been found *not* to constitute reasonable cause for purposes of penalty abatement include: a taxpayer's discovery of reportable income after the original due date (*Appeal of Elixir Industries*, 83-SBE-248, Dec. 14, 1983), a taxpayer's difficulty in obtaining necessary information (*Appeal of J.B. and P.R. Campbell, supra*), the complexity of the tax computations necessary to complete a return (*Appeal of Incom International, Inc.*, 82-SBE-053, Mar. 31, 1982), a taxpayer's difficulty in resolving accounting problems (*Appeal of Cerwin-Vega International*, 78-SBE-070, Aug. 15, 1978), a taxpayer's difficulty in determining or estimating income with exactitude (*Appeal of Roger W. Sleight, supra*; *Appeal of Avco Financial Services, Inc.*, 79-SBE-084, May 9, 1979), a taxpayer's unresolved business matters (*Appeal of Bild Industries, Inc.*, 82-SBE-212, Sept. 21, 1982), and the failure of the taxpayer's accountant to properly account for income in a timely manner (*Appeal of M.B. and G.M. Scott, supra*).

Appellants' request for abatement and refund of the late payment penalty is based on their belief that the late payment was the result of a reasonable cause and was not due to willful neglect. They claim that during the first quarter of 2015, Christopher Cole, the Trustee for the

Joyce K. Schaeffer Irrevocable Trust, provided an estimate of the taxable income to the beneficiaries of the trust and that appellants relied on this information when they paid their estimated tax and later filed their extension request. They did not receive their Schedule K-1 from the Joyce K. Schaeffer Irrevocable Trust until September of 2016, more than a year later. Appellants contend that they first realized that the estimated income information from the Trustee was materially incorrect only after their tax preparer completed their tax returns for 2015 (more than 18 months after the incorrect information had been provided by the Trustee). Appellants have had no financial or tax training and claim that they had no reason to believe that the estimated taxable income was materially incorrect. Appellants' contention that they have timely filed and paid their income taxes for the last 25 years is not contested.

Documents received from appellants include their Schedule K-1 (541) for the Joyce K Schaeffer Irrevocable Trust, along with a cover letter dated September 9, 2016 from the Trustee, Christopher Cole, and a copy of their original claim for refund filed in 2016 during the protest process with the FTB.

Respondent does not contest the findings of fact herein. Respondent's documents include a law summary entitled "Late Payment of Tax Penalty, Reasonable Cause Abatement," which cites numerous statutes, court decisions, and formal opinions of the Board of Equalization, including R&TC section 19132, which defines the late payment penalty.


While Appellants have provided some evidence that they relied on a fiduciary's estimate of projected income, they have not shown what additional steps they took, if any, to obtain updated information that would have enabled them to modify that first estimate prior to their filing deadline. Thus, there is no evidentiary basis upon which to conclude that appellants behaved as ordinarily intelligent and prudent businesspersons by relying on an outdated estimate of trust income in this manner. While it is commendable that appellants have timely filed and paid taxes over the past 25 years, there is no provision in California law that allows for the abatement of a penalty on that basis.

HOLDING


For the tax year 2015, appellants have not shown reasonable cause for abatement of the late payment penalty.

DISPOSITION

For the reasons set forth above, the FTB's action in denying appellants' claim for refund is sustained.


Teresa A. Stanley
Administrative Law Judge

We concur:



John O. Johnson
Administrative Law Judge



Sara A. Hosey
Administrative Law Judge