

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of:  <b>RONN AND ADRIENNE ENGLISH</b>	) ) ) ) ) )	OTA Case No. 18010882  Date Issued: November 20, 2018
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**OPINION**

Representing the Parties:

For Appellants: Robert L. Goldstein, Attorney

For Respondent: Jean M. Cramer, Tax Counsel IV

N. DANG, Administrative Law Judge: Pursuant to Revenue and Taxation Code section 19324,<sup>1</sup> Ronn and Adrienne English (appellants) appeal an action by the Franchise Tax Board (FTB or respondent) denying appellants’ claims for refund for the 2012, 2013, and 2014 tax years, totaling \$16,920.59.<sup>2</sup>

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

**ISSUES**

1. Have appellants established that abatement of the section 19131 penalty (late-filing penalty) imposed for the 2012, 2013, and 2014 tax years and the section 19133 penalty (demand penalty) imposed for 2012 and 2013 is warranted, because appellants’ failure to file their returns within the prescribed time period was due to reasonable cause and not willful neglect?

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<sup>1</sup> Hereafter, all undesignated statutory references are to sections of the Revenue and Taxation Code.

<sup>2</sup> Appellants filed refund claims for \$7,451, \$4,767, and \$4,702.59 for the 2012, 2013, and 2014 tax years, respectively.

2. Have appellants established that the section 19136 penalty (underpayment of estimated tax penalty) imposed for the 2014 year should be abated?

FACTUAL FINDINGS

1. On January 30, 2012, appellants' daughter was critically injured in a fire which occurred at her apartment, and she passed away a few days later, on February 1, 2012. Based on the Contra Costa Fire Department's determination that appellant's daughter caused the fire, the insurance company for the apartment owner initially determined that appellant-husband, who cosigned his daughter's lease, was liable for the resulting damages. In response, appellants spent the next three years hiring investigators and contesting appellant-husband's liability for the fire, which was resolved in his favor sometime in 2015.
2. Appellants failed to timely file returns for the 2012, 2013, and 2014 tax years.
3. FTB obtained information indicating that appellant-husband was required to file returns for the 2012 and 2013 tax years. On May 26, 2015, FTB sent appellant-husband a Demand for Tax Return for the 2012 year, requesting that by July 1, 2015, he file a return, send a copy of his return if previously filed, or explain why he was not required to file. On May 4, 2016, FTB sent appellant-husband a similar Demand for Tax Return for the 2013 tax year, with a deadline to respond of June 8, 2016.
4. Appellant-husband failed to respond to FTB's Demands for Tax Return within their respective deadlines. Consequently, on July 27, 2015, FTB issued to appellant-husband a Notice of Proposed Assessment (NPA) for the 2012 tax year, estimating his income to be \$146,856, and proposing a tax liability of \$8,881, a late-filing penalty of \$2,220.25, a demand penalty of \$2,220.25, and a \$79 filing enforcement cost recovery fee. On July 18, 2016, FTB also issued to appellant-husband an NPA for the 2013 tax year, estimating his income to be \$132,372, and proposing a tax liability of \$7,715, a late-filing penalty of \$1,928.75, a demand penalty of \$1,928.75, and an \$81 filing enforcement cost recovery fee.
5. On December 15, 2016, appellants jointly filed late returns for the 2012, 2013, and 2014 tax years, which FTB accepted as filed. Appellants' 2012 return reported taxable income of \$280,132, a tax liability of \$21,051, and a withholding credit of \$128, resulting in tax due of \$20,923. Appellants' 2013 return reported taxable income of \$177,642, a tax

liability of \$11,434, and a withholding credit of \$81, resulting in tax due of \$11,353.

Appellants' 2014 return reported taxable income of \$247,496, a tax liability of \$17,819, and a withholding credit of \$70, resulting in tax due of \$17,749.

6. Consequently, on January 17, 2017, FTB issued to appellants a Notice of State Income Tax Due for the 2012, 2013, and 2014 tax years. For the 2012 tax year, FTB imposed a late-filing penalty of \$5,230.75, a demand penalty of \$2,220.25, plus applicable interest. For the 2013 tax year, FTB imposed a late-filing penalty of \$2,838.25, a demand penalty of \$1,928.75, plus applicable interest. For the 2014 tax year, FTB imposed a late-filing penalty of \$4,437.25, an underpayment of estimated tax penalty of \$265.34, plus applicable interest.
7. Appellants made various payments in 2017, which satisfied their tax liabilities for the 2012, 2013, and 2014 tax years in full. Thereafter, appellants filed timely claims for refund for the 2012, 2013, and 2014 tax years, requesting abatement of all the aforementioned penalties totaling \$16,920.59. On September 22, 2017, FTB issued Notices of Action denying appellants' claims for refund for the 2012, 2013, and 2014 tax years. This timely appeal followed.

### DISCUSSION

Issue 1 – Have appellants established that abatement of the late-filing penalties imposed for the 2012, 2013 and 2014 tax years, and the demand penalties for the 2012 and 2013 tax years, is warranted due to reasonable cause and the absence of willful neglect?

Appellants do not dispute the imposition or calculation of the late-filing penalties for the 2012, 2013, and 2014 tax years, or the demand penalties for the 2012 and 2013 tax years. Rather, appellants argue that abatement of these penalties is warranted for a single reason; that is, appellants' grief and depression over the untimely and tragic death of their daughter on February 1, 2012, and their ensuing legal problems, prevented appellants from filing their returns within the prescribed time for the 2012, 2013, and 2014 tax years.

The late-filing and demand penalties shall not apply if a taxpayer establishes that the failure to file a return within the prescribed deadlines was due to reasonable cause and not willful neglect. (§§ 19131(a), 19133.) The standard of reasonable cause requires the taxpayer to establish that the failure to timely file occurred despite the exercise of ordinary business care and

prudence. (*United States v. Boyle* (1985) 469 U.S. 241, 246.)<sup>3</sup> On the other hand, willful neglect means a conscious, intentional failure or reckless indifference. (*Id.* at p. 245.)

Based on the record before us, which is absent of any evidence or allegations that appellants acted intentionally or recklessly, we conclude that there is no willful neglect.

With respect to the existence of reasonable cause, we note that “[r]easonable cause requires a showing of incapacity; selective inability to file tax returns while attending to other responsibilities does not demonstrate reasonable cause.” (*Wright v. Commissioner*, T.C. Memo. 1998-224.) While grief or other personal difficulties may be considered reasonable cause, the taxpayer must present credible and competent proof that despite the exercise of ordinary business care and prudence, they were continuously prevented from timely filing a return. (*Appeal of Michael J. and Diane M. Halaburka*, 85-SBE-025, Apr. 9, 1985; *Appeal of Kerry and Cheryl James*, 83-SBE-009, Jan. 3, 1983; *Appeal of Allen L. and Jacqueline M. Seaman*, 75-SBE-080, Dec. 16, 1975.)<sup>4</sup> In addition, “the duration of the incapacity must approximate that of the failure to file.” (*Wright v. Commissioner, supra.*) However, where personal difficulties simply caused the taxpayer to sacrifice the timeliness of one aspect of his affairs to pursue other aspects, the taxpayer must bear the consequences of that choice. (*Appeal of Michael J. and Diane M. Halaburka, supra*; *Appeal of William T. and Joy P. Orr*, 68-SBE-010, Feb. 5, 1968.) Finally, the ability to continue performing daily business operations negates grief as reasonable cause. (*Kilson v. Commissioner*, T.C. Summ. Op. 2003-44.)

The facts of this case are heart-rending to say the least. We begin by recognizing that the loss of a child oftentimes results in overwhelming grief and sorrow, and we have no doubt that appellants suffered tremendously from this tragic loss. Though we are deeply sympathetic to appellants’ situation, we remain bound by the above law in determining whether the facts of this case are sufficient to establish reasonable cause.

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<sup>3</sup> Because the relevant language of sections 19131 and 19133 pertaining to the reasonable cause exception is patterned after Internal Revenue Code section 6651, the federal courts’ interpretation of the “reasonable cause” standard is persuasive authority in determining the proper construction of these California statutes. (*Andrews v. Franchise Tax Bd.* (1969) 275 Cal.App.2d 653, 658; *Rihn v. Franchise Tax Bd.* (1955) 131 Cal.App.2d 356, 360.)

<sup>4</sup> Pursuant California Code of Regulations, title 18, section 30501(d)(3), precedential opinions of the State Board of Equalization (BOE) that were adopted prior to January 1, 2018, may be cited as precedential authority to the Office of Tax Appeals unless a panel removes, in whole or in part, the precedential status of the opinion. BOE’s precedential opinions are viewable on BOE’s website: <<http://www.boe.ca.gov/legal/legalopcont.htm>>.

In that regard, the record in the instant case lacks the necessary evidence to establish that despite the exercise of ordinary business care and prudence, appellants were continuously prevented from filing their returns until December 15, 2016. Specifically, appellants' representative has not explained or provided any evidence showing how the loss of appellants' daughter continuously prevented them from filing their returns until December 15, 2016, almost five years later. Likewise, there is no explanation or evidence demonstrating how appellants' legal problems, which were resolved sometime in 2015, continuously prevented them from filing their returns until December 15, 2016. In addition, appellants' federal income tax returns for the 2012, 2013, and 2014 tax years show that appellants worked during these years, earning a combined income of \$309,210, \$204,425, and \$257,098 for the 2012, 2013, and 2014 tax years, respectively. Appellants also admittedly spent the next three years following the loss of their daughter hiring investigators and disputing appellant-husband's liability for the fire which caused her death. These facts indicate that appellants were not incapacitated or otherwise continuously prevented from spending the few hours necessary to either file their returns, or to hire someone to do so on their behalf, but rather, appellants prioritized these other activities over the filing of their returns.

Based on the foregoing, we conclude that appellants have not established reasonable cause warranting abatement of the late-filing or demand penalties.

Issue 2 – Have appellants established that the underpayment of estimated tax penalty imposed for the 2014 tax year should be abated?

Appellants do not dispute the imposition or calculation of the underpayment of estimated tax penalty imposed for the 2014 tax year. Instead, appellants contend that this penalty should be abated due to reasonable cause and the absence of willful neglect, for the same reasons provided above in Issue 1.

Section 19136 incorporates by reference Internal Revenue Code (IRC) section 6654, which imposes an underpayment of estimated tax penalty upon an individual for failing to timely make estimated income tax payments. (§ 19136(a); IRC, § 6654.) Relief from this penalty is generally not available upon a showing of reasonable cause and the absence of willful neglect; thus, extenuating circumstances are irrelevant.<sup>5</sup> (*Farhoumand v. Commissioner* T.C. Memo.

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<sup>5</sup> The estimated tax penalty will not apply if it is established that the failure to make an estimated tax payment was due to reasonable cause and the absence of willful neglect, *and* the taxpayer retired after reaching age

2012-131; *Appeal of Weaver Equipment Co.*, 80-SBE-048, May 21, 1980.) Instead, this penalty may only be abated under very narrow circumstances; that is, by reason of casualty, disaster, or other unusual circumstances, such that imposition of the penalty would be against equity and good conscience. (IRC, § 6654(e)(3)(A).) For example, abatement may be warranted due to serious illness or injury of the taxpayer. (*Meyer v. Commissioner*, T.C. Memo. 2003-12.)

There are no arguments or evidence that appellants' failure to make estimated tax payments for the 2014 tax year was due to the very narrow circumstances prescribed by IRC section 6654(e)(3)(A). We are also unable to determine from the record why appellants inexplicably failed to make estimated tax payments for the 2014 tax year. Accordingly, we are not persuaded that imposition of the underpayment of estimated tax penalty would be against equity and good conscience.

Regarding appellants' contention that the underpayment of estimated tax penalty should be abated due to reasonable cause, as noted above, there is no reasonable cause exception for this penalty. (*Farhoumand v. Commissioner, supra; Appeal of Weaver Equipment Co., supra.*)

Based on the foregoing, we conclude that abatement of the underpayment of estimated tax penalty for the 2014 tax year is not warranted.

#### HOLDINGS

1. Appellant has failed to establish reasonable cause warranting abatement of the late-filing penalties imposed for the 2012, 2013, and 2014 tax years, and the demand penalties imposed for the 2012 and 2013 tax years.
2. Appellant has not established that the underpayment of estimated tax penalty imposed for the 2014 tax year should be abated.

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62 or became disabled in the taxable year for which the estimated payments were required to be made or in the previous year. (IRC, § 6654(e)(3)(B).) Appellants have not alleged disability or that they are over age 62 and retired; therefore, we do not discuss this further.

DISPOSITION

Respondent's action is sustained.

DocuSigned by:  
*Nguyen Dang*  
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Nguyen Dang  
Administrative Law Judge

We concur:

DocuSigned by:  
*Sara A Hosey*  
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Sara A. Hosey  
Administrative Law Judge

DocuSigned by:  
*Linda Cheng*  
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Linda C. Cheng  
Administrative Law Judge