

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18010687
STEPHANIE DIMAGGIO) Date Issued: January 8, 2019
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OPINION

Representing the Parties:

For Appellant: William M. Iadarola, Esq.

For Respondent: Andrew Amara, Tax Counsel III

D. CHO, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Stephanie DiMaggio (appellant) appeals an action by the Franchise Tax Board (FTB) denying appellant’s claim for refund for a late-payment penalty and interest of \$2,927.01¹ 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. Whether appellant has demonstrated reasonable cause to abate the late-payment penalty for the 2015 tax year.
2. Whether appellant is entitled to abatement of interest.

FACTUAL FINDINGS

1. Appellant did not make any estimated payments of tax on or before April 15, 2016, for the 2015 tax year.

¹ Although appellant’s claim for refund requests a refund of \$3,260 for appellant’s payment of “interest and penalties,” appellant only paid a penalty amount of \$2,505.45 and interest of \$421.56, which totals \$2,927.01. Appellant cannot recover more than the amount of penalties and interest that she actually paid, which was \$2,927.01.

2. On September 15, 2016, appellant made a payment of \$36,000 for her tax liability for the 2015 tax year.
3. Appellant filed a California Nonresident or Part-Year Resident Income Tax Return for the 2015 tax year on October 14, 2016. According to the return, appellant reported California taxable income of \$363,895 and a corresponding tax liability of \$33,406. Appellant also reported zero California withholdings but an estimated tax payment of \$36,000. Accordingly, appellant reported an overpayment of tax of \$2,594 (\$36,000 - \$33,406).
4. By Notice of Tax Return Change dated October 24, 2016, FTB accepted appellant's reported tax liability and estimated payment amount; however, FTB imposed a late-payment penalty of \$2,505.45 and interest of \$421.56. The October 24, 2016 notice indicated a balance owed of \$333.01.
5. Appellant paid the balance on May 16, 2017, and then filed a claim for refund dated May 19, 2017, which requested abatement of the penalty and interest for reasonable cause. Specifically, appellant alleges that she became aware of her tax liability on September 15, 2016,² and upon discovery of that information, appellant promptly made a large tax payment. Prior to the September 15, 2016 notification, appellant states that she was not aware of any tax liability owed to California and believed that she had sufficient wage withholdings and estimated tax payments to fully satisfy her California tax liability.³
6. FTB denied the claim for refund by letter dated September 22, 2017.
7. This timely appeal followed.

² Appellant owned a 50 percent interest in a California limited liability company (LLC) that generated the income attributable to appellant. Appellant explains that she only became aware of a California liability when the LLC filed its return with FTB.

³ As of April 15, 2016, the date tax payments were due for the 2015 tax year, appellant had zero withholding or estimated tax payments.

DISCUSSION

Issue 1. Whether appellant has demonstrated reasonable cause to abate the late-payment penalty for the 2015 tax year.

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).” A personal income tax return is due on or before the 15th day of April following the close of the calendar year. (R&TC, § 18566.) R&TC section 19132 provides that a late-payment penalty is imposed when taxpayers fail to pay the amount shown as due on the return on or before the due date of the return. The late-payment penalty will be abated if the taxpayers show that the failure to make a timely payment of tax was due to reasonable cause and was not due to willful neglect. (R&TC, § 19132(a).) The taxpayers bear the burden of proving that both conditions existed. (*Appeal of Roger W. Sleight*, 83-SBE-244, Oct. 26, 1983.)⁴

To establish reasonable cause for the late payment of tax, taxpayers must show that their 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, supra*; *Appeal of Robert T. and M.R. Curry*, 86-SBE-048, Mar. 4, 1986.) The taxpayers bear the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Appeal of Robert T. and M.R. Curry, supra*; see also *Appeal of M.B. and G.M. Scott*, 82-SBE-249, Oct. 14, 1982.)

Here, appellant made a payment of \$36,000 on September 15, 2016, which was five months after the April 15, 2016 due date of the return. As a result, appellant’s payment was late, and FTB properly imposed a late-payment penalty pursuant to R&TC section 19132. As previously stated, it is appellant’s burden to demonstrate that her failure to timely make a payment was due to reasonable cause and not willful neglect. (See *Appeal of Robert T. and M.R. Curry, supra*.)

Although appellant primarily argues that she first became aware of the tax liability in September of 2016, we note that lack of knowledge is not reasonable cause for a late payment of tax. (See *Appeal of Elixir Industries*, 83-SBE-248, Dec. 14, 1983 [late discovery of additional

⁴ BOE’s precedential opinions are viewable on BOE’s website: <<http://www.boe.ca.gov/legal/legalopcont.htm>>.

income was not reasonable cause].) Furthermore, while appellant contends that she was unaware of the income attributable to her through the LLC (of which she was a 50-percent owner), she has not shown or alleged that she made any attempt to contact the LLC manager, procure financial information from the LLC (even an estimate of income for the 2015 tax year), or otherwise diligently attempt to obtain any information necessary to estimate her tax liability when it was due. These facts indicate that appellant has not established reasonable cause. (See *Appeals of J.B. and P.R. Campbell*, 85-SBE-112, Oct. 9, 1985 [appellants’ unsubstantiated assertion that they “diligently attempted to secure” information from partnerships upon which to estimate their income failed to establish reasonable cause for underpayment of tax].)

Lastly, appellant also argues that she was under the impression that she had sufficient withholdings and estimated tax payments to cover her liability; however, appellant had no withholdings or estimated tax payments prior to the \$36,000 payment on September 15, 2016. Therefore, we find appellant’s argument does not establish reasonable cause for her failure to timely pay her California tax liability.

Issue 2. Whether appellant is entitled to interest abatement.

Interest is not a penalty. It is compensation for the taxpayer’s use of money, and the law requires FTB to collect interest on past-due taxes. There is no reasonable cause exception to the imposition of interest. (R&TC, § 19101(a); *Appeal of Yvonne M Goodwin*, 97-SBE-003, Mar. 19, 1997.) However, FTB can abate interest in limited circumstances pursuant to various provisions of the R&TC. (See R&TC, §§ 19104, 21012, and 19112.)

Appellant has not alleged abatement of interest for any of these circumstances. Instead, appellant argues that the imposition of interest was “purely punitive in nature which is not proper under the law.” However, as stated above, the imposition of interest is mandatory and in complete compliance with the law. Therefore, we find that appellant’s argument does not warrant any abatement of interest.

HOLDINGS

1. Appellant has not demonstrated reasonable cause to abate the late-payment penalty for the 2015 tax year.
2. Appellant is not entitled to abatement of interest.

DISPOSITION

FTB's denial of appellant's claim for refund is sustained.

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Daniel K. Cho
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Daniel K. Cho
Administrative Law Judge

We concur:

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John O Johnson
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John O. Johnson
Administrative Law Judge

DocuSigned by:
Tommy Leung
0C90542BE88D4E7...
Tommy Leung
Administrative Law Judge