

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18042697
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JAMES W. SPLETTSTOESSER) Date Issued: February 2, 2019
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)

OPINION

Representing the Parties:

For Appellant: James W. Splettstoesser
For Respondent: Gi Jung Nam, Tax Counsel

D. BRAMHALL, Administrative Law Judge: Pursuant to Revenue and Taxation Code section 19324,¹ James W. Splettstoesser (appellant) appeals an action by the Franchise Tax Board (FTB) denying appellant’s claims for refund of \$301.78 for the 2011 tax year and \$144.68 for the 2012 tax year.²

Appellant did not request an oral hearing and therefore the matter is being decided based on the written record.

ISSUES

1. Has appellant established reasonable cause for the late payment of tax for the 2011 and 2012 tax years?
2. Has appellant established a basis to abate the estimated tax penalties for the 2011 and 2012 tax years?

¹ Unless otherwise indicated, all statutory “section” or “§” references are to sections of the Revenue and Taxation Code.

² Appellant claimed a refund of “delinquency and demand penalties” without indicating a refund amount. FTB has not imposed any demand penalties for the years at issue. The above amounts represent the total of late payment and estimated tax penalties for the years at issue. While appellant’s refund claims are somewhat ambiguous with regard to whether he is contesting the estimated tax penalty, we construe the claims liberally and, to ensure we fully address the claims, address the delinquent payment and estimated tax penalties.

FACTUAL FINDINGS

1. Appellant timely filed his 2011 California Resident Income Tax Return on October 15, 2012, claiming single filing status with no dependents, a federal adjusted gross income of \$56,945, taxable income of \$41,657, total payments of \$0, and tax due of \$1,506.
2. Appellant failed to timely pay the 2011 tax due and instead made a series of installment payments to FTB from March 17, 2014, to September 15, 2015. The payments included the tax due plus \$268.12 for a late payment penalty, \$33.66 for an estimated tax penalty, a \$34 installment agreement fee and interest.
3. Appellant timely filed his 2012 California Resident Income Tax Return on April 1, 2013, claiming single filing status with no dependents, a federal adjusted gross income of \$54,400, taxable income of \$29,304, total payments of \$0, and tax due of \$564.
4. Appellant failed to timely pay the 2012 tax due and instead made a series of installment payments to FTB from December 15, 2015, to July 17, 2017. The payments included tax due plus \$133.54 for a late payment penalty, \$11.14 for an estimated tax penalty, a \$34 installment agreement fee and interest.
5. On August 15, 2017, appellant filed claims for refund for the 2011 and 2012 taxable years, seeking abatement of the “delinquency and demand penalties assessed.”
6. FTB denied the claim for refund for the 2011 taxable year on September 13, 2017 and denied the claim for refund for the 2012 taxable year on September 14, 2017.
7. This timely filed appeal followed.

DISCUSSION

1. Has appellant established reasonable cause for the late payment of taxes for the 2011 and 2012 tax years?

Section 19001 provides that the personal income tax “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).” 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.

(§ 19132(a)(2)(A).) The second part is a penalty of 0.5 percent per month, or portion of a month (not to exceed 40 months), calculated on the outstanding balance. (§ 19132(a)(2)(B).) Here,

there is no dispute that the actual payment of tax for 2011 and 2012 was late nor that the penalty on the delinquent tax was properly computed.

The late payment penalty will be abated if a taxpayer shows that the failure to make a timely payment of tax was due to reasonable cause and not due to willful neglect.³ (§ 19132(a).) 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*, 83-SBE-244, Oct. 26, 1983; *Appeal of Robert T. and M.R. Curry*, 86-SBE-048, Mar. 4, 1986.)⁴ The taxpayer bears 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*.) A failure to pay will be considered due to reasonable cause if the taxpayer makes a satisfactory showing that they exercised ordinary business care and prudence in providing for the payment of their tax liability and were nevertheless either unable to pay the tax or would suffer undue hardship if they paid on the due date. (Treas. Reg. § 301.6651-1(c)(1).)⁵

Appellant alleges his health issues, which created financial difficulties, left him unable to timely file and pay taxes in both 2011 and 2012. Specifically, appellant alleges that for years prior to 2011 and 2012 medical issues prevented him from working as much as during an undefined prior time period, presumably suggesting his earnings were reduced. He further alleges significant additional expenses associated with caring for his bed-ridden mother-in-law in his home, commencing in 2011, expenses for which appellant admits he cannot account at this juncture. Based on these allegations, appellant argues that reasonable cause exists for his delinquent payment of tax.

We first note that appellant did timely file his tax returns for both years and that appellant had reportable earnings from working during both years. Further we note that all of appellant's

³ Thus, in order to provide grounds for abating the penalty, the taxpayer must show both the existence of reasonable cause and the absence of willful neglect. As we find that appellant has not demonstrated the existence of reasonable cause, we do not address whether appellant has shown a lack of willful neglect.

⁴ Precedential opinions of the State Board of Equalization (SBE) may be cited as precedential authority to the Office of Tax Appeals. (Cal. Code Regs., tit. 18, § 30501(d)(3).) Published decisions of the Board of Equalization (Board), referenced as "SBE" in the citations are available on the Board's website at <http://www.boe.ca.gov/legal/legalopcont.htm>

⁵ California tax law substantially conforms to federal tax law and regulations related to reasonable cause for abatement of the late payment penalty.

income in the appeal years came from his medical practice, so that while he was likely dealing with health issues appellant was able to continue working. Accordingly, we find no basis for suggesting health issues alone prevented timely payment.

We next consider alleged financial difficulties. Undue hardship or inability to pay may constitute reasonable cause “to the extent that the taxpayer has made a satisfactory showing that he exercised ordinary business care and prudence in providing for payment of his tax liability and was nevertheless either unable to pay the tax or would suffer an undue hardship [as described in Treas. Reg. section 1.6161-1(b)] if he paid on the due date.” (Treas. Reg. § 301.6651-1(c)(1).) Whether a taxpayer was unable “to pay the tax in spite of the exercise of ordinary business care and prudence in providing for payment of his tax liability” will be determined based on a consideration of “all the facts and circumstances of the taxpayer's financial situation, including the amount and nature of the taxpayer's expenditures in light of the income (or other amounts) he could, at the time of such expenditures, reasonably expect to receive prior to the date prescribed for the payment of the tax.” (*Ibid.*) “A taxpayer will be considered to have exercised ordinary business care and prudence if he made reasonable efforts to conserve sufficient assets in marketable form to satisfy his tax liability and nevertheless was unable to pay all or a portion of the tax when it became due.” (*Ibid.*)

Treasury Regulation section 1.6161-1(b) defines the term “undue hardship.” This regulation requires that the taxpayer show that payment of the tax on the due date would have imposed “undue hardship,” which requires more than merely inconveniencing 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 from making payment on the due date” (Treas. Reg. § 1.6161-1(b).)

As noted above, in order to establish reasonable cause for late payment based on financial difficulties, appellant must show that he exercised ordinary business care and made reasonable efforts to conserve enough funds to pay his tax liabilities. Whether payment of the tax would result in undue hardship is determined as of the due date for the tax. Thus, for appellant to demonstrate that he had reasonable cause for his late payment of tax, he must show that he made reasonable efforts to conserve sufficient funds to pay the tax by April 17, 2012, with regard to the 2011 tax year, and by April 15, 2013, with regard to the 2012 tax year, but was nevertheless unable to pay the tax by those dates without suffering undue hardship.

Here, appellant has provided no financial records to support his claimed inability to pay.⁶ While we understand that caring for family members creates the potential for additional costs, we have no evidence upon which to base a finding that undue hardship would have resulted from the payment of the amounts of tax owed for 2011 (\$1,506) and 2012 (\$564). Further, no documentation was provided relative to appellant's spouse's potential income (appellant filed as a single taxpayer but alleges he is married, and his spouse is caring for his mother-in-law). Accordingly, we find that appellant has failed to meet his burden to prove reasonable cause existed for his delinquent payment of tax for 2011 and 2012.

2. Has appellant established a basis to abate the estimated tax penalty for the 2011 and 2012 tax years?

Subject to certain exceptions not relevant to the issues on appeal, section 19136 incorporates Internal Revenue Code (IRC) section 6654. IRC section 6654 imposes an addition to tax, which is treated as a penalty, where an individual fails to timely pay estimated tax. The addition to tax is like an interest charge in that it is calculated applying the interest rate imposed on underpayments on the amount of the underpayment of estimated tax. (See IRC, § 6654(a); § 19136(b).) There is no provision in the IRC or California Revenue and Taxation Code that allows the addition to tax for the underpayment of estimated tax to be abated based solely on a finding of reasonable cause. As a result, there is no general reasonable cause exception to imposition of the addition to tax for the underpayment of estimated tax. (*Gerald F. and Barbara G. Johnson*, 2018-OTA-119P; *Adams v. Commissioner*, T.C. Memo. 2013-7; *Farhoumand v. Commissioner*, T.C. Memo. 2012-131; *Nasir v. Commissioner*, T.C. Memo. 2011-283; see also *Appeal of Weaver Equipment Company*, 80-SBE-048, May 21, 1980.) The addition to tax under IRC section 6654 is mandatory unless the taxpayer establishes that a statutory exception applies. (*Nitschke v. Commissioner*, T.C. Memo. 2016-78.)

Although there is no provision allowing for the abatement of the addition to tax based solely on reasonable cause, IRC section 6654(e)(3) provides two avenues upon which the addition to tax may be waived. First, under IRC section 6654(e)(3)(A), the government may waive the addition to tax if it determines that, "by reason of casualty, disaster, or other unusual

⁶ We note that BOE provided appellant with additional time to provide further information in support of his appeal, but no further information was supplied. We also note that FTB's brief noted that appellant had not provided financial information and appellant was invited to file a reply brief but did not do so.

circumstances the imposition of such addition to tax would be against equity and good conscience.” Second, under IRC section 6654(e)(3)(B), the addition to tax may be waived if the IRS (or here, FTB) determines that (i) during the applicable tax year or the preceding year, the taxpayer either retired after having attained age 62, or became disabled, and (ii) the underpayment was due to “reasonable cause” and not due to willful neglect. Thus, the issue of whether a taxpayer had reasonable cause for underpaying estimated tax only arises if, during the applicable tax year or the preceding year, the taxpayer either retired after having attained age 62, or became disabled, and (ii) the underpayment was due to “reasonable cause” and not due to willful neglect.

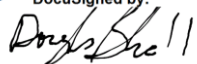
Here, no such circumstances are alleged or appear to exist. We have included this analysis, however, to fully evaluate appellant’s somewhat ambiguous refund claims. Further, as noted above, we have found that the underpayment was not due to reasonable cause.

HOLDINGS

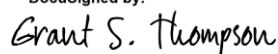
1. Appellant has not established reasonable cause for the late payment of tax for the 2011 and 2012 tax years.
2. Appellant has not established a basis to abate the estimated tax penalties for the 2011 and 2012 tax years.

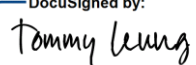
DISPOSITION

Respondent’s actions in denying appellant’s claims for refund are sustained in full.

DocuSigned by:

 CA2E033C0906484...
 Douglas Bramhall
 Administrative Law Judge

We concur:

DocuSigned by:

 FC572D5881AE41B...
 Grant S. Thompson
 Administrative Law Judge

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 UC90542BE88D4E7...
 Tommy Leung
 Administrative Law Judge