

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
TIMOTHY GARTH

) OTA Case No. 18042825
)
) Date Issued: February 5, 2019
)
)
)

OPINION

Representing the Parties:

For Appellant: Andrew S. Greber, CPA

For Respondent: Greg W. Heninger, Specialist

J. ANGEJA, Administrative Law Judge: Pursuant to California Revenue and Taxation Code section 19324,¹ Timothy Garth (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$787.67² for the 2016 tax year.

Appellant waived his right to an oral hearing and therefore the matter is being decided based on the written record.

ISSUES

1. Whether appellant has established reasonable cause for failing to make a timely payment of tax.
2. Whether appellant has established that the estimated tax penalty should be waived.
3. Whether appellant has established that interest should be abated.

FACTUAL FINDINGS

1. On February 9, 2017, appellant electronically filed his 2016 California income tax return, reporting taxable income of \$229,313, a tax liability of \$16,827, withholdings of \$5,625,

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

² This amount consists of a late payment penalty of \$672.12, an estimated tax penalty of \$49.15, and interest of \$66.40.

- and a balance due of \$11,202. The return also reported a self-imposed estimated tax penalty in the amount of \$216, with a total balance due of \$11,418 (\$11,202 + \$216).
2. On May 24, 2017, appellant's representative contacted FTB regarding the balance due for 2016, and the representative advised that on April 12, 2017, appellant mailed a payment of \$11,418 to FTB. FTB advised that its records reflected no payment as of that date, but that it may take up to 45 days for the check to post to appellant's account.
 3. On May 30, 2017, FTB issued a Notice of State Income Tax Due, indicating a balance due of \$11,981.66, consisting of unpaid tax, penalties, and interest.
 4. On June 2, 2017, appellant made an electronic payment to FTB in the amount of \$11,418, which fully satisfied the tax liability and partially satisfied the penalties. On September 5, 2017, appellant made a payment in the amount of \$571.67, which fully satisfied the remaining liability.
 5. On October 6, 2017, FTB received appellant's claim for refund, in which he requested the abatement of the penalties and interest. Appellant asserts that on April 12, 2017, he timely mailed a check for \$11,418, and contacted FTB when the payment did not clear his bank within 30 days. Appellant asserts that he waited a total of 45 days to see if the check would post to his account, in reliance on FTB's advice, and then he paid the liability quickly thereafter when the original payment never posted to his account. Appellant submitted a copy of his check register as evidence in support of his position.
 6. By a Notice of Action dated November 16, 2017, FTB denied appellant's claim for refund. This timely appeal followed.

DISCUSSION

Issue 1 – Whether appellant has established reasonable cause for failing to make a timely payment of tax.

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).” 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 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, it is undisputed that FTB did not receive the payment of the \$11,202 until June 2, 2017, and that the penalty was properly computed and imposed.

The late payment penalty may be abated if the taxpayers can show that the failure to make a timely tax payment was due to reasonable cause and was not due to willful neglect. (§ 19132(a)(1).)

To establish reasonable cause for the late payment of tax, taxpayers must show that their failure to make a timely tax payment of the proper amount occurred despite the exercise of ordinary business care and prudence. (*Appeal of Curry*, 86-SBE-048, Mar. 4, 1986.)³ The taxpayers bear the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Ibid.*) The failure to timely remit the balance due on a tax liability caused by an oversight does not, by itself, constitute reasonable cause. (*Appeal of Risser*, 84-SBE-044, Feb. 28, 1984.)

Appellant contends that he timely mailed a payment of \$11,418 to FTB on April 12, 2017, but for reasons beyond his control, FTB never received the payment. However, appellant's copy of his check register has no probative value regarding whether (or when) appellant may have mailed a check to FTB. Appellant has not submitted evidence such as a certified or registered mail receipt, or other proof that appellant timely mailed the payment to FTB. Absent persuasive evidence of timely mailing of the payment, appellant has failed to establish that his failure to timely make the payment occurred despite exercising ordinary business care and prudence.

Issue 2 – Whether appellant has established that the estimated tax penalty should be waived.

Except as otherwise provided, section 19136 conforms to Internal Revenue Code (IRC) section 6654 and imposes a penalty for the underpayment of estimated tax where the taxpayer's installment tax payments are less than the amounts due at the end of the installment periods. For California purposes, installment tax payments are due on April 15, June 15, and January 15 of the following tax year. (§ 19136.1; IRC, § 6654(c)(2).) This penalty is similar to an interest charge, which applies from the installment due date to the earlier of April 15 of the following tax year or the date on which the underpayment is paid. (IRC, § 6654(b)(2).)

³ Board of Equalization (BOE) opinions are generally available for viewing on the BOE's website: <<http://www.boe.ca.gov/legal/legalopcont.htm#boeopinion>>.

Appellant does not protest the imposition or computation of the penalty. Instead, appellant argues that the penalty amount should be refunded based on reasonable cause, as asserted above. However, there is no general reasonable cause exception to the estimated tax penalty.⁴ (*Farhoumand v. Commissioner* (2012) T.C. Memo. 2012-131; *Appeal of Weaver Equipment Company*, 80-SBE-048, May 21, 1980.) Accordingly, appellant has failed to establish a basis on which to waive the penalty for underpayment of estimated tax.

Issue 3 – Whether appellant has established that interest should be abated.

Interest is required to be assessed from the date when payment of tax is due through the date that it is paid. (§ 19101.) Imposition of interest is mandatory; it is not a penalty, but is compensation for appellant’s use of money after it should have been paid to the state. (*Appeal of Yamachi*, 77-SBE-095, June 28, 1977.) There is no reasonable cause exception to the imposition of interest. (*Appeal of Goodwin*, 97-SBE-003, Mar. 19, 1997.)

To obtain relief from the imposition of interest, a taxpayer must qualify under the waiver provisions of sections 21012, 19112, or 19104. The relief of interest under section 21012 is not relevant here, as FTB did not provide appellant with any written advice. Section 19112 requires a taxpayer to make a showing of extreme financial hardship caused by a significant disability or other catastrophic circumstance. However, appellant makes no such showing. Under section 19104, subdivisions (a)(1) and (2), FTB is authorized to abate or refund interest if there has been an unreasonable error or delay in the performance of a ministerial or managerial act by an employee of FTB. Here, appellant has not alleged any such errors or delays. Thus, appellant has not established any of the statutory grounds for interest abatement.


HOLDINGS

1. Appellant did not establish that his failure to make a timely payment of tax for the 2016 tax year was due to reasonable cause.
2. Appellant did not establish that the estimated tax penalty should be waived.
3. Appellant did not establish that interest should be abated.


⁴ Nevertheless, the estimated tax penalty will not apply under limited circumstances, such as where it is established that either: the failure to timely pay the estimated tax payment was due to reasonable cause *and* the taxpayer retired after reaching age 62; or the taxpayer 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).) Appellant has not alleged disability or that he is over age 62; therefore, we do not discuss this further.

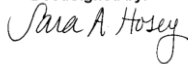
DISPOSITION

FTB's action is sustained.

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Jeffrey G. Angeja
Administrative Law Judge

We concur:

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Tommy Leung
Administrative Law Judge

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Sara A. Hosey
Administrative Law Judge