

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

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| In the Matter of the Appeal of: |) | OTA Case No. 18010946 |
| |) | |
| PENNY THINNES |) | Date Issued: December 18, 2018 |
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OPINION

Representing the Parties:

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| For Appellant: | Penny Thinnes |
| For Respondent: | Joel M. Smith, Tax Counsel |

N. DANG, Administrative Law Judge: Pursuant to Revenue and Taxation Code section 19324,¹ Penny Thinnes (appellant) appeals an action by the Franchise Tax Board (FTB or respondent) denying appellant’s claim for refund for the 2014 tax year for \$9,377.34.

Appellant waived her right to an oral hearing, and therefore, this case is being decided based on the written record.

ISSUES

1. Whether appellant has established that the late-payment penalty should be abated.
2. Whether appellant has established that the underpayment of estimated tax penalty should be abated.
3. Whether appellant has established that interest should be abated.

FACTUAL FINDINGS

1. Appellant filed a non-remittance 2014 California Resident Income Tax Return on July 14, 2015, reporting total tax due of \$92,006 and estimated tax payments totaling \$700. Appellant also self-assessed interest, late-return and late-payment penalties totaling

¹ Unless otherwise specified, all further undesignated statutory references are to the Revenue and Taxation Code.

\$6,536, and an underpayment of estimated tax penalty of \$1,738, resulting in a reported total amount due of \$99,580.

2. FTB issued to appellant a Notice of State Income Tax Due dated August 4, 2015, for \$92,006 tax, \$8,129.03 penalties and \$838.65 interest for the 2014 tax year.
3. Because appellant did not pay this liability in full by the August 19, 2015 due date, FTB issued to appellant an Income Tax Due Notice dated September 15, 2015, showing an additional balance due of \$409.66 for accrued interest and an increase to the late-payment penalty.
4. Thereafter, appellant made a series of payments from August 14, 2015, through September 22, 2015, paying her 2014 account balance in full.
5. By letter dated August 10, 2017, appellant requested abatement of the late-payment and underpayment of estimated tax penalties and interest totaling \$9,377.34. FTB treated this letter as a timely claim for refund for the 2014 tax year, and subsequently issued a Notice of Action dated November 6, 2017, denying the claim for refund. This timely appeal followed.

DISCUSSION

Issue 1 – Whether appellant has established that the late-payment penalty should be abated.

Appellant does not dispute the imposition or calculation of the late-payment penalty, but rather, contends that it should be abated due to reasonable cause. Specifically, appellant contends that she was not willful, and her failure to timely pay her 2014 tax liability was due to the overwhelming mental health issues she suffered during her divorce, which began on January 28, 2014, and ended on November 4, 2015. Appellant also contends that she mistakenly believed her estimated tax payments had fully satisfied her tax liability for 2014. In support, appellant provided various medical billing records, plane tickets, car rental receipts and hotel bills, which she asserts are evidence that she was undergoing psychological counseling relating to her divorce.

Unless it is shown that the failure to timely pay tax is due to reasonable cause and not willful neglect, a penalty of up to 25 percent is imposed for a taxpayer's failure to pay the amount of tax shown on a return on or before the due date. (§ 19132(a)(1), (2).) The standard of reasonable cause requires the taxpayer to establish that the failure to timely act occurred despite

the exercise of ordinary business care and prudence. (*United States v. Boyle* (1985) 469 U.S. 241, 246.)² While illness or other personal difficulties may constitute reasonable cause, the taxpayer must present competent and credible proof that they were continuously prevented from timely acting. (See *Appeal of Michael J. and Diane M. Halaburka*, 85-SBE-025, Apr. 9, 1985.)³ The burden is on the taxpayer to establish reasonable cause by a preponderance of the evidence. (See Cal. Code Regs., tit. 18, § 30705(a), (c).) On the other hand, willful neglect means a conscious, intentional failure or reckless indifference. (*United States v. Boyle, supra*, at p. 245.)

Based on the record before us, which is absent of any evidence or allegations that appellant intentionally failed to timely pay her taxes or that she acted recklessly, we conclude that there is no willful neglect.

Regarding the existence of reasonable cause, while we are sympathetic to appellant's situation, as noted above, the burden for establishing "reasonable cause" is significantly greater than its name might suggest, requiring appellant to demonstrate not only personal hardship, but also a continuous inability to timely pay her taxes despite the exercise of ordinary business care and prudence. Appellant's assertion that she was experiencing mental health issues does not meet this exacting standard, because it does not explain how those difficulties *continuously* prevented her from timely paying her taxes, or what steps she took to ensure that her taxes were timely paid.

Further, the record does not establish that appellant was prevented by her mental health issues from timely paying her taxes. To the contrary, despite her alleged mental health issues, appellant was apparently able to gather the documentation necessary to compute her tax liability, retain the services of a tax preparer to file the return on her behalf, and ultimately ensure that her return was filed before the deadline. In comparison, we note that the act of paying the amount due as shown on the return requires little more than enclosing payment with the return or making an online payment. Therefore, the fact that appellant was capable of timely filing her 2014 tax

² Because the relevant language of section 19132 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.)

³ 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>>.

return indicates that her mental health issues did not continuously prevent her from also completing the less burdensome task of timely paying her taxes. We also reject appellant's contention that she believed her estimated tax payments were sufficient, because her 2014 return clearly shows a \$99,580 total amount due; thus, appellant could not have held a good faith belief that no taxes were due at the time she filed her return. Accordingly, appellant has not established reasonable cause for her failure to timely pay her 2014 tax liability.

Issue 2 – Whether appellant has established that the underpayment of estimated tax penalty should be abated.

Appellant does not dispute the imposition or calculation of the underpayment of estimated tax penalty. Instead, appellant contends that this penalty should be abated 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.) The estimated tax penalty will not apply if it is established that the failure to make an estimated tax payment was due not only to reasonable cause and the absence of willful neglect, but *also* that the taxpayer retired after reaching age 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).) Further, 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).)

Appellant has not provided any allegations or evidence establishing that her failure to timely pay her 2014 estimated taxes was due to any of the narrow circumstances prescribed by IRC section 6654(e)(3)(A). In addition, appellant has not demonstrated that she is disabled or over age 62 and retired; thus, her reasonable cause argument is not relevant to determining whether to abate the penalty. Accordingly, we are not persuaded that imposition of the underpayment of estimated tax penalty would be against equity and good conscience.

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

Appellant does not dispute the imposition or calculation of interest, but rather, contends that it should be abated for the same reasons described in Issue 1.

Generally, FTB may abate or waive interest only under limited circumstances, such as when the accrual of interest is attributable in whole or in part to an unreasonable error or delay committed by an officer or employee of the FTB in the performance of a ministerial or managerial act and certain other conditions are met (§ 19104), or where the taxpayer demonstrates an inability to pay interest due solely to an extreme financial hardship caused by significant disability or other catastrophic circumstance (§ 19112). Further, there is no reasonable cause exception to the imposition of interest. (*Appeal of John M. Shubert*, 79-SBE-161, Sept. 25, 1979.)

Appellant does not allege any circumstances permitting abatement or waiver of interest. Rather, appellant’s arguments are based entirely on reasonable cause, which is not a permissible basis for abatement. (*Appeal of John M. Shubert, supra.*) Accordingly, there is no basis for interest relief.

HOLDINGS

1. Appellant has not established that abatement of the late-payment penalty is warranted.
2. Appellant has not established that abatement of the underpayment of estimated tax penalty is warranted.
3. Appellant has not established that interest abatement is warranted.

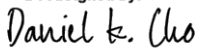
DISPOSITION

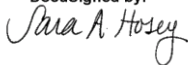
Respondent’s action is sustained.

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 Nguyen Dang
 Administrative Law Judge

We concur:

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 Daniel K. Cho
 Administrative Law Judge

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 Sara A. Hosey
 Administrative Law Judge