

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18011367
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ELIZABETH C. DASKAROLIS) Date Issued: March 15, 2019
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OPINION

Representing the Parties:

For Appellant: Diana M. Wilson, CPA

For Respondent: Connor Meggs, Graduate Student Assistant

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Elizabeth C. Daskarolis appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$440.64 for the 2014 taxable year.¹

Appellant waived her right to an oral hearing; therefore, we decide this matter based on the written record.

ISSUES

1. Has appellant demonstrated reasonable cause for failing to timely pay her 2014 tax liability?
2. Has appellant established she is entitled to abatement of interest?

FINDINGS

1. Appellant is a California resident who filed a timely 2014 tax return, reporting a tax liability of \$6,360. Appellant reported tax withholdings of \$7,865 and an estimated payment of \$797, resulting in a reported overpayment of \$2,302. The tax withholdings reported on appellant’s California return included \$6,370 of state taxes that had been withheld and paid to Oregon.

¹ The claim for refund includes a late-payment penalty of \$284.76, plus interest of \$155.88.

2. On her 2014 California return, Appellant requested that FTB apply \$1,000 of the \$2,302 reported overpayment to her 2015 tax liability and refund the remaining \$1,302. FTB applied \$1,000 to appellant's 2015 estimated tax, but did not issue the requested refund of \$1,302 at that time.
3. Appellant received a Form 1099-R from Teachers Insurance and Annuity Association (TIAA). TIAA reported gross distributions to appellant of \$70,788.31, federal income tax withheld, and \$6,370 state tax withheld. TIAA reported it sent the state taxes it withheld to the state of Oregon, as noted on the Form 1099-R, box 13a.
4. Appellant's representative stated that she contacted FTB in June of 2015 to determine why appellant's requested refund had not been issued. The FTB agent informed the representative that the refund had not been issued, and that appellant must provide proof that the California state tax withholding amount reported on her return was correct. When appellant's representative reviewed the Form 1099-R issued to appellant, she realized that the reported state tax withholdings were incorrectly stated on appellant's return, because \$6,370 of state tax holdings had been paid to Oregon, not to California, by TIAA.
5. On August 15, 2015, appellant filed an amended tax return, reducing her withholdings (by \$6,370) to \$1,495. Appellant reported an additional tax liability of \$4,068, which she paid on the same date. The reported tax liability did not include the \$2,302 appellant originally reported as an overpayment.
6. On September 24, 2015, FTB erroneously issued to appellant a refund of \$1,302 plus interest, for a total refund amount of \$1,316.74.
7. On June 3, 2016, FTB refunded to appellant the \$1,000 transferred from appellant's 2014 taxable year to her 2015 tax account.² Appellant contends she was unaware that FTB had transferred \$1,000 from her 2014 tax account to her 2015 tax account, and that she had not requested a refund on her 2015 tax return.
8. On December 12, 2016, FTB issued a Notice of Tax Return Change. FTB adjusted appellant's 2014 tax liability to reflect her payment of \$4,068, her estimated tax payment of \$797, her withholding of \$1,495, and the erroneous refund to her of \$1,316.74. The

² The refund totaled \$1,020, which appellant claims included the \$1,000 transferred from 2014 to 2015, an \$18 penalty she had paid, and \$2 in interest.

tax liability also included \$1,000 that had been applied to appellant's 2015 estimated tax. FTB assessed a late-payment penalty of \$284.76, plus interest, for a total revised balance due of \$2,757.38. Appellant paid that balance on January 4, 2017.

9. Appellant submitted a claim for refund in the amount of \$440.64, which included the late-payment penalty, plus interest. Appellant's claim requested abatement of the late-payment penalty based on reasonable cause.
10. Appellant asserts in this appeal that she had changed her mailing address to an address in Oregon, specifying that it was only for communications and a distribution from TIAA. Appellant contends she did not intend to change her California residence, and did not know that TIAA also changed her state tax withholdings to Oregon.

DISCUSSION

Issue 1 – Has appellant demonstrated reasonable cause for failing to timely pay her 2014 tax liability?

California imposes a late-payment penalty for a taxpayer's failure to pay the amount of tax shown on a return before the due date, unless it is established that the late payment was due to reasonable cause and not due to willful neglect. (R&TC, § 19132(a)(1).) Specifically, respondent shall impose a late-payment penalty of five percent of the underpaid tax amount plus one-half of one percent of the outstanding liability for each subsequent month or fraction thereof, for a maximum of 40 months. (R&TC, § 19132(a)(2).)

Appellant does not dispute that she paid \$4,068 four months late, on August 15, 2015. Based on that four-month delay in submitting full payment, FTB assessed a late-payment penalty of \$284.76.³ FTB did not assess a late-payment penalty on the amount refunded to appellant or on the amount transferred to appellant's 2015 tax liability. Appellant asserts that she had reasonable cause for making her payment late.

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. (R&TC, § 19132(a).) Reasonable cause requires a showing that the taxpayer acted as an ordinarily intelligent and prudent businessperson would have acted under similar circumstances. (*Appeal*

³ Penalty calculation: $(\$4,068 \times .05) + (\$4,068 \times .005 \times 4 \text{ months}) = \284.76 .

of Curry, 86-SBE-048, Mar. 4, 1986; *Appeal of Tons*, 79-SBE-027, Jan. 9, 1979.)⁴ The taxpayer bears the burden to prove that reasonable cause existed. (*Appeal of Sleight*, 83-SBE-244, Oct. 26, 1983.)

Appellant's request to abate the late-payment penalty is based on reasonable cause. She offers more than one basis for her reasonable cause argument. Appellant contends that she did not instruct TIAA to change her permanent address. She states that TIAA made an error in paying state taxes to the wrong state (Oregon instead of California). When she discovered the error, appellant filed an amended return that did not include the \$6,370 that was withheld and paid to Oregon. Because appellant had been informed that her refund had not been processed, she reported additional tax of \$4,068, and paid that amount on August 15, 2015. Appellant contends that she believed that because FTB did not process the refund she initially claimed, it also had not transferred \$1,000 to her 2015 estimated tax liability (as had been requested on her 2014 return). Appellant points out that FTB did not notify her that she had a 2014 outstanding tax liability that included the erroneous refunds (\$1,302 and \$1,000) until December 12, 2016.

Furthermore, appellant claims that she never directed TIAA to send her state tax withholdings to Oregon, and therefore she assumed the withholdings had been paid to California, which was the state of her residence. She only directed TIAA to use the Oregon address for the purpose of receiving information, and a distribution, from TIAA. However, the Form 1099-R issued to appellant by TIAA does use a state code "OR," showing that the withheld amounts were paid to Oregon and not to California. The state code was overlooked by both appellant and her representative. We believe that a reasonably prudent person would have carefully reviewed the tax information statement (Form 1099-R) in a timely manner, and would have recognized the error. The law imposes the duty to pay taxes on the taxpayer; therefore, the standard of ordinary business care and prudence requires a taxpayer to take affirmative measures to ensure the correct information is entered on a return. Appellant has not offered an explanation as to why she did not review her Form 1099-R prior to submitting her 2014 taxes. Therefore, appellant has not established that she is entitled to an abatement of the late-payment penalty.

⁴ Published decisions of the Board of Equalization, designated by "SBE" in the citation, are available on that Board's website at: <<http://www.boe.ca.gov/legal/legalopcont.htm>>.

Issue 2 – Has appellant established she is entitled abatement of interest?

Generally, interest must be paid on any taxes that are not paid “on or before the last date prescribed for payment.” (R&TC, § 19101(a).) Interest is also imposed on any addition to tax relating to underpayment of tax, from the due date of the return through the date of payment. (R&TC, § 19101(c)(2)(B).) An “addition to tax” expressly includes penalties relating to the late payment of tax. (*Ibid.*) Interest is not a penalty but is simply compensation for a taxpayer’s use of money. (*Appeal of Jaegle*, 76-SBE-070, June 22, 1976.) There is no reasonable cause exception to 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 R&TC sections 21012, 19112, or 19104. With respect to interest imposed on the late-payment penalty, the relief provision of R&TC section 21012 is not relevant here, as FTB did not provide appellant with any written advice. R&TC section 19112 also is not applicable here as it requires a taxpayer to make a showing of extreme financial hardship caused by a significant disability or other catastrophic circumstance, which appellant has not alleged.

As relevant to this appeal, when taxes have been erroneously refunded, FTB may demand repayment of the refunded amounts, plus collect interest on the refunded amounts. (R&TC, § 19120.) However, FTB must abate interest on any claim to recover an erroneous refund until 30 days after the date of FTB’s demand for repayment, so long as the taxpayer has not caused the erroneous refund. (R&TC, § 19104(c).)

In this case, appellant filed her amended return with the understanding that the refund she initially requested had not been processed. FTB erred in refunding the \$1,302 (plus \$14.74 of interest) on September 24, 2015, after appellant had amended her 2014 return. FTB did not make a demand for return of that amount until December 12, 2016, and appellant paid within 30 days of the date of the notice. Therefore, to the extent that appellant paid interest to FTB on the amounts that had been erroneously refunded (\$1,302 and \$1,000), we hold that it must be abated.

Additionally, FTB erroneously refunded \$1,000, plus interest, for the 2015 taxable year. Before discovering that TIAA paid appellant’s 2014 state tax withholdings to Oregon instead of to California, appellant requested that \$1,000 of her reported overpayment be transferred to her 2015 tax liability. Because appellant believed that FTB had not issued her refund, she mistakenly believed that no transfer to 2015 had occurred. She, therefore, paid her 2015 tax

liability in full, and FTB thereafter issued a refund of the \$1,000 overpayment that resulted from its having transferred that amount from her 2014 tax year to 2015.

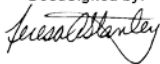
When an overpayment is made by a taxpayer for any year, and that taxpayer has a tax liability for any other year, R&TC section 19108(b) requires FTB to credit the overpayment on the deficiency. FTB refunded appellant's 2015 overpayment on June 3, 2016, although her 2014 tax deficiency was not paid until January 4, 2017. FTB was required to credit appellant's 2015 overpayment to her outstanding 2014 tax deficiency rather than refund it to her. Because it was instead erroneously refunded, we conclude that interest must be abated to the extent that it was charged on the \$1,000 that should have been credited to appellant's 2014 tax liability.

HOLDINGS


1. Appellant has not demonstrated reasonable cause for failing to timely pay her 2014 tax liability, and the late-payment penalty was correctly assessed.
2. With respect to interest charged on the late payment of \$4,068, and on the late-payment penalty, appellant has not established that she is entitled to relief.
3. To the extent that interest was charged on the \$1,302 and on \$1,000 amounts that were erroneously refunded, appellant is entitled to abatement of interest, subject to any setoffs for interest paid to appellant on the refunded amounts.

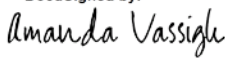
DISPOSITION

FTB's action is sustained, except for interest charged on the erroneous refunds, if any.

DocuSigned by:

Teresa A. Stanley
Administrative Law Judge

We concur:

DocuSigned by:

Sara A. Hosey
Administrative Law Judge

DocuSigned by:

Amanda Vassigh
Administrative Law Judge