

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 18011247
)
INDERJIT S. ANAND AND) Date Issued: April 22, 2019
)
CHANDANA ANAND)
)
_____)

OPINION

Representing the Parties:

For Appellants: Dr. Inderjit S. Anand and Chandana Anand

For Respondent: Mira Patel, Tax Counsel¹

For Office of Tax Appeals: Andrew Jacobson, Tax Counsel III

J. JOHNSON, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, appellants appeal an action by respondent Franchise Tax Board (FTB) in denying their claim for refund in the amount of \$6,577.63² for the 2015 tax year. Appellants have waived their right to an oral hearing and, therefore, this matter is being decided based on the written record.

ISSUES

1. Whether appellants have demonstrated reasonable cause for the failure to make a timely payment of tax.
2. Whether appellants have established that interest should be abated.

¹ We note that Ms. Amanda Vassigh was previously counsel for respondent in this matter. Ms. Vassigh Sigal currently works for the Office of Tax Appeals (OTA), but has had no involvement in this appeal since joining the OTA, and has not had any contact with other employees of the OTA regarding this appeal.

² This amount consists of a late payment penalty of \$5,561.44 and \$1,016.19 in interest. The interest of \$1,016.19 consists of the following: (1) interest of \$998.55 calculated on appellants' late-paid tax; (2) interest of \$4.51 compounded on the interest from the late-paid tax; and (3) interest of \$13.13 on the late payment penalty. Appellants affirmed on appeal that they are requesting a refund of the entire late payment penalty (i.e., \$5,561.44) and all interest (i.e., \$1,016.19).

FACTUAL FINDINGS

1. Appellants flew from their home in San Diego, California, to India in January 2016 to care for appellant-husband's mother after she suffered a serious stroke. Other than a brief return to California in March 2016, appellants remained in India until they ultimately returned to California on April 17, 2016.³
2. On October 6, 2016, appellants timely filed a joint 2015 California Nonresident or Part-Year Resident Income Tax Return, reporting a balance due of \$69,518, which they remitted with the return.⁴ The FTB accepted appellants' return as filed.
3. In a Notice of Tax Return Change dated October 13, 2016, the FTB notified appellants that it had imposed a late payment penalty of \$5,561.44, plus interest.
4. Appellants responded by a letter dated October 28, 2016, stating that their absence from the United States while tending to appellant-husband's mother caused them to be "unable to take care of [their] tax return in a timely manner." Appellants requested that the FTB waive the late payment penalty. Since appellants had not paid the amount owed as of that date, the FTB considered the letter to be an informal claim for refund on which it could not take action.
5. After the FTB issued an Income Tax Due Notice dated November 30, 2016, appellants made a payment satisfying their 2015 liability in full.
6. Appellants submitted an FTB Form 2917, *Reasonable Cause – Individual and Fiduciary Claim for Refund*, dated December 19, 2016, in which they requested that the late payment penalty be abated on the grounds that their failure to make a timely payment was caused by events related to the prolonged illness and eventual death of appellant-husband's mother in India. Appellants asserted that they returned to the United States on March 18, 2016, specifically to prepare their tax return, but that they had to return to India following appellant-husband's mother's death on March 26, 2016.

³ The year of some background events are listed as 2015 in appellants' briefs, rather than 2016. Based on other facts and evidence, this appears to be a typographical error rather than a factual dispute.

⁴ Appellants also had withholding or estimated payments that satisfied a portion of their tax liability by the due date. References herein to late-paid tax refers only to the portion remitted with their return in October 2016.

7. The FTB denied appellants' claim for refund on the ground that the information appellants provided did not establish reasonable cause for the abatement of the late payment penalty. This timely appeal followed.

DISCUSSION

Issue 1 - Whether appellants have demonstrated reasonable cause for the failure to make a timely payment of tax.

R&TC section 19132 imposes a late payment penalty when a taxpayer fails to pay the amount shown as due on the return by the date prescribed for the payment of the tax. Generally, the date prescribed for the payment of the tax is the due date of the return (without regard to extensions of time for filing). (R&TC, § 19001.) Here, the FTB properly assessed the late payment penalty because the payment due date was April 15, 2016, and appellants did not satisfy their 2015 tax liability until October 6, 2016, almost six months after the due date.

The late payment penalty may be abated if the taxpayer shows 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)(1).) To establish reasonable cause for the late payment of tax, a taxpayer must show that the failure to make a timely payment of the proper amount of tax occurred despite the exercise of ordinary business care and prudence. (*Appeal of Curry* (86-SBE-048) 1986 WL 22783.) The taxpayer bears the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Appeal of Scott* (83-SBE-094) 1983 WL 15480.)

If personal difficulties simply caused a taxpayer to sacrifice the timeliness of one aspect of his or her affairs to pursue other aspects, the taxpayer must bear the consequences of that choice. (*Appeal of Orr* (68-SBE-010) 1968 WL 1640); see, e.g., *Appeal of Malakoff* (83-SBE-140) 1983 WL 15525.) Illness of the taxpayer or their immediate family may be considered reasonable cause if the taxpayer presents credible and competent proof that he or she was continuously prevented from filing a tax return or paying the tax because of that illness. (*Appeal*

of Halaburka (85-SBE-025) 1985 WL 15809; *Appeal of Seaman* (75-SBE-080) 1975 WL 3564.)⁵

Appellants contend that appellant-husband's mother's illness, her death, and the settlement of her affairs following her death, caused them to be primarily in India from January 6, 2016, to April 17, 2016. Appellants assert that they were totally preoccupied with caring for appellant-husband's mother and later settling her affairs during the time they were in India. Appellants contend that this preoccupation prevented them from timely filing their 2015 tax return.⁶ In support, appellants have provided the death certificate, confirming the March 26, 2016 date of death. Based on appellants' assertions, it appeared they were preoccupied with the illness of a family member during approximately the first four months of 2016, and were required to conduct unplanned travel out of the country, which significantly interfered with their tax preparation process. However, appellants returned to California on April 17, 2016, yet did not pay their tax liability until October 9, 2016.

Appellants have not provided any explanation as to why they waited until October 6, 2016, to pay their taxes. The law provides an automatic extension for the filing of a tax return, but not an extension for the payment of tax. (See R&TC, § 18567; Cal. Code Regs., tit. 18, § 18567.) While we are sympathetic with respect to their loss, appellants have neither argued nor produced any evidence showing why they were continuously unable to pay their tax until October 6, 2016. Assuming appellants' assertions are true, and they were continuously prevented from paying their tax owed until they resolved the affairs of appellant-husband's mother, that reasonable cause expired upon their return to California in April 2016. An acceptable reason for the failure to pay taxes "will excuse such failure only so long as the reason remains valid." (*Steven Bros. Foundation, Inc. v. Commissioner* (1962) 39 T.C. 93, 130, *affd.* in part & *revd.* in part on other grounds (8th Cir. 1963) 324 F.2d 633.) Therefore, appellants have

⁵ These cases dealt specifically with whether complications due to health concerns rose to the standard of reasonable cause for purposes of the late filing of returns; however, "[t]he issue of whether a taxpayer has demonstrated reasonable cause for failure to pay tax asks the same questions and weighs the same evidence as the inquiry of whether reasonable cause exists for failure to file a tax return." (*Appeal of Berolzheimer* (86-SBE-172) 1986 WL 22860.)

⁶ Appellants' arguments focus on the filing of their tax return, rather than the payment of their tax liability. Although the acts of filing a return and paying taxes are distinct and require separate analyses, we also review appellants' contentions on appeal as they apply to the late payment of their tax.

not shown reasonable cause for their failure to pay the tax owed from April 2016 to October 2016, and the penalty must be sustained.⁷

Issue 2 - Whether appellants have established that interest should be abated.

R&TC section 19101 imposes interest on the balance due when a taxpayer fails to paytax by the due date. The imposition of interest is mandatory. (*Appeal of Yamachi* (77-SBE-095) 1977 WL 3905.) Interest is not a penalty but is simply compensation for a taxpayer's use of money after the date when the tax is due. (*Appeal of Jaegle* (76-SBE-070) 1976 WL4086.)

Under R&TC section 19104, subdivision (a)(1), respondent may abate all or a part of any interest on a deficiency to the extent that interest is attributable in whole or in part to any unreasonable error or delay committed by the FTB in the performance of a ministerial or managerial act. (R&TC, § 19104, subd. (a)(1).) The FTB's determination not to abate interest is presumed correct, and the burden is on a taxpayer to prove error. (*Appeal of Myers* (2001-SBE-01) 2019 WL 1187160.) Our jurisdiction in an interest abatement case is limited by statute to a review of the FTB's determination for an abuse of discretion. (R&TC, § 19104, subd. (b)(2)(B).) There is no reasonable cause exception to the imposition of interest. (*Appeal of Jaegle, supra.*)

Appellants have not identified any error or delay on the part of the FTB, nor is there any evidence of such in the appeal record. Therefore, R&TC section 19104 does not apply to this appeal. Appellants have made only reasonable cause arguments on appeal. There is no reasonable cause exception to the imposition of interest. Therefore, we find no basis for the abatement of interest.

⁷ Respondent provides an email from appellants in which they state that they had difficulty calculating the amount of capital gains income that they received on the sale of their flat in London, their largest item of income for 2015, because of their difficulty in gathering documents in the United Kingdom. Appellants have not made this argument on appeal. Regardless, difficulties in obtaining documents and a taxpayer's unsubstantiated assertion that he or she exercised diligence in attempting to obtain the needed information prior to the deadline does not constitute reasonable cause. (*Appeal of Campbell* (85-SBE-112) 1985 WL 15882; *Appeal of Bieneman* (82-SBE-148) 1982 WL 11825.)

Appellants assert on appeal that the late-filing penalty imposed at the federal level was abated by the Internal Revenue Service (IRS) based on appellants' good filing history. However, while the IRS has a first-time abatement program for taxpayers with a good filing history, California does not have a statute that provides similar relief. Appellants' good filing history is commendable, but does not by itself show reasonable cause for the late payment of tax for the year at issue here.

HOLDINGS

1. Appellants have failed to demonstrate reasonable cause for the failure to make a timely payment of tax.
2. Appellants have failed to establish that interest should be abated.

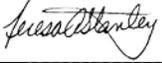
DISPOSITION

The action of the FTB in denying appellants' claim for refund is sustained.

DocuSigned by:

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John O. Johnson
Administrative Law Judge

We concur:

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Teresa A. Stanley
Administrative Law Judge

DocuSigned by:

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Douglas Bramhall
Administrative Law Judge