

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)	OTA Case No. 18083538
NEEMA MOHAMMADIZAD AND)	Date Issued: August 26, 2019
SUZANNE G. MOHAMMADIZAD)	
)	
)	

OPINION

Representing the Parties:

For Appellants: Neema and Suzanne Mohammadizad

For FTB: Jean M. Cramer, Tax Counsel IV

For Office of Tax Appeals: Neha Garner, Tax Counsel III

A. VASSIGH, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, appellants Neema and Suzanne G. Mohammadizad (appellants) appeal an action by the Franchise Tax Board (FTB) in denying a claim for refund in the amount of \$3,924.70 for the 2016 tax year.

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

ISSUES

1. Whether appellants have demonstrated reasonable cause for the late payment of tax.
2. Whether appellants have shown that an underpayment of estimated tax penalty should be refunded.

FACTUAL FINDINGS

1. Appellants filed a timely married filing jointly 2016 return reflecting a balance due of \$33,588, after applying withholding credits.
2. Appellants did not include a payment with their return.
3. Appellants had sought the assistance of a Mr. West from Westtax Financial Services, who advised them that due to their financial circumstances, they would qualify for a

- federal offer-in-compromise and that once the Internal Revenue Service (IRS) relieved them of the federal penalties, FTB would also abate the state penalties.
4. On November 14, 2017, FTB issued a Notice of Tax Return Change - Revised Balance, which notified appellants that in addition to the unpaid tax balance due, FTB had proposed a late payment penalty and an underpayment of estimated tax penalty (plus accrued interest).
 5. Payments were made throughout 2017, and appellants paid the balance in full on June 1, 2018.
 6. Appellants submitted a request to FTB to waive the \$3,905.57 in penalties for the 2016 tax year.¹ Appellants asserted that due to circumstances beyond their control including a job loss, the birth of their child, and their mother's illness, there was reasonable cause to abate the late payment and underpayment of estimated tax penalties. On June 26, 2018, FTB denied appellants' claim for refund.
 7. This timely appeal followed.

DISCUSSION

Issue 1 - Whether appellants have demonstrated reasonable cause for the late payment of tax.

R&TC section 19001 provides that generally 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).” R&TC section 19132(a)(1)(A) 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. (R&TC, § 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. (R&TC, § 19132(a)(2)(B).) Here, it is undisputed that appellants failed to make payment of the entire tax liability by April 15, 2017, the original due date of their 2016 return. As a result, on April 15, 2017, there was a balance due for their 2016 tax year in the amount of \$33,588. Appellants had paid a portion of their liability for the 2016 tax year before the original filing and payment deadline of April 15, 2017. Although appellants’ original return reported a self-

¹ Appellants mistakenly believed this was the amount paid in penalties; however, the total delinquent filing penalty paid by appellants totaled \$3,924.70, which was the claim for refund amount acknowledged in this appeal.

assessed tax liability of \$45,886, FTB did not receive appellants' payment of the balance of the tax due (i.e., \$33,588) until the payments were subsequently made on March 27, 2018, May 9, 2018, and June 1, 2018. Therefore, the late payment penalty of \$3,924.70 was correctly imposed.

The late payment penalty may 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).) The taxpayer bears the burden of proving that both conditions existed. (*Appeal of Sleight* (83-SBE-244) 1983 WL 15615.) To establish reasonable cause for a late payment of tax, a taxpayer must show that his or her 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. (*Ibid.*) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Magidow* (82-SBE-274) 1982 WL 11930.)

In the present case, appellants state that they relied on a tax professional, Mr. West from Westtax Financial Services, who advised them that by law they would qualify for an offer-in-compromise and that once the IRS relieved them of the federal penalties, FTB would also abate the state penalties. The United States Supreme Court, in *United States v. Boyle* (1985) 469 U.S. 241, held that it is reasonable for a taxpayer to rely on the advice of an accountant or attorney when that accountant or attorney advises a taxpayer as to a matter of tax law. However, the Supreme Court also reasoned that one does not need to be a tax expert to know that tax returns have fixed filing dates and taxes must be paid when due, and a taxpayer's reliance on an accountant or attorney cannot be a substitute for compliance with an unambiguous statute. (*Ibid.*) As the Supreme Court held in *Boyle*, "[i]t requires no special training or effort to ascertain a deadline and make sure that it is met." (*Id.*, at p. 252.)

However, reliance upon the advice of a tax professional on a matter of substantive law, such as whether a tax liability exists or a return is required to be filed, can constitute reasonable cause. (See *Estate of La Meres v. Commissioner* (1992) 98 T.C. 294.) The taxpayer must show that full disclosure was made of the relevant facts and documents to the tax preparer, that the tax preparer was a competent professional with sufficient expertise, and that the taxpayer relied in good faith on the tax preparer's advice. (*Boyle, supra*, 469 U.S. 241, 244.) Whether a taxpayer

should pay a tax liability on or before the due date of the return is not a legal question. Timely payment of taxes does not constitute substantive tax advice. While appellants' claim that they were misled by Mr. West is credible, appellants have not established that their reliance was reasonable. Appellants have a non-delegable duty to pay their taxes in a timely manner, and they have not met their burden of proving that the facts and circumstances, including their reliance on Mr. West, constitutes reasonable cause for waiving the late payment penalty.

Furthermore, the IRS's abatement of appellants' federal late payment penalty has no bearing on FTB. A review of appellants' federal Account Transcript indicates that the federal penalty was abated due to "first-time abate/clean compliance history" and not on a basis of reasonable cause. California law requires a finding of reasonable cause for the abatement of the penalty and does not have a program comparable to the first-time penalty abatement at the IRS and, therefore, there is no authority for FTB to follow the federal determination.

Issue 2 - Whether appellants have shown that an underpayment of estimated tax penalty should be refunded.

R&TC section 19136 incorporates by reference, with certain modifications, Internal Revenue Code (IRC) section 6654, which imposes an addition to tax or penalty if a taxpayer fails to make estimated tax payments (and/or withholdings) in a timely manner. The amount charged is similar to an interest charge and applies from the date the estimated tax payment was due until the date it is paid.

Neither R&TC section 19136 nor IRC section 6654 allow for relief from the underpayment of estimated tax penalty upon a mere showing of "reasonable cause" or a "lack of willful neglect." (IRC, § 6654; R&TC, § 19136; *Appeal of McEwen* (85-SBE-091) 1985 WL 15898.) There are only two bases for waiver of the underpayment of estimated tax penalty, and those bases are set forth in IRC section 6654(e)(3), to which California conforms. IRC section 6654(e)(3)(A) provides for waiver of the penalty if the government determines that by reason of casualty, disaster, or other unusual circumstances the imposition of the penalty would be against equity and good conscience. IRC section 6654(e)(3)(B) provides for waiver of the penalty if the government determines that (i) the underpayment was due to "reasonable cause," and (ii) either the taxpayer retired after having attained age 62, or the taxpayer became disabled, in the taxable year for which estimated payments were required to be made or in the previous taxable year.


Appellants have not alleged or shown that they were disabled or that either of them retired after reaching the age of 62 within the meaning of IRC section 6654(e)(3)(B). Similarly, appellants have not alleged or shown that they suffered from a “casualty, disaster, or other unusual circumstances” such that the addition to tax would be “against equity and good conscience” under IRC section 6654(e)(3)(A). Appellants are not contesting the imposition or computation of the underpayment of estimated tax penalty; however, appellants are arguing that reasonable cause exists as a sufficient basis for abating all penalties imposed. As discussed above, reasonable cause alone is not a sufficient basis for abating the underpayment of estimated tax penalty. Based on the foregoing, appellants have failed to show that the underpayment of estimated tax penalty should be refunded.

HOLDINGS

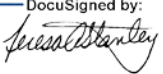
1. Appellants have not demonstrated reasonable cause for the late payment of tax.
2. Appellants have not shown that an underpayment of estimated tax penalty should be refunded.


DISPOSITION

FTB’s denial of appellants’ claim for refund is sustained.

DocuSigned by:

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 Amanda Vassigh
 Administrative Law Judge

We concur:

DocuSigned by:

 0CC6C6ACCC8A44D
 Teresa A. Stanley
 Administrative Law Judge

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 Neil Robinson
 Administrative Law Judge