2019 – OTA – 269
Nonprecedential

OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **DOUGLAS A. SMITH AND KRISTA M. SMITH**	OTA Case No. 18093798 Date Issued: September 16, 2019

OPINION

Representing the Parties:

For Appellants: Douglas A. Smith and Krista M. Smith

For Respondent: Eric A. Yadao, Tax Counsel III

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

N. ROBINSON, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Douglas A. Smith and Krista M. Smith (appellants) appeal an action by the respondent Franchise Tax Board (FTB) denying appellants' claim for refund of $1,072.11[1] for the 2016 tax year.

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

ISSUE

Have appellants established reasonable cause for failing to timely pay tax?

FACTUAL FINDINGS

1. Appellants filed a timely tax return for the 2016 tax year on March 22, 2017, reporting a tax liability of $24,390. Appellants reported withholdings of $12,956 and a balance due of $11,434.
2. Appellants made a timely payment of $192 on April 15, 2017. However, appellants

[1] We note that FTB's claim for refund denial indicates that the amount at issue is $1,031.40, however, the amount referenced in FTB's opening brief states the amount as $1,072.11. It appears to be correctly calculated in respondent's opening brief as the underpayment portion on appellants' late penalty is $514.55 (i.e., $10,291 x .05) and the monthly portion is $557.56, totaling $1,072.11.

failed to timely pay the remaining tax due for the 2016 tax year by the April 18, 2017[2] due date. Appellants satisfied their remaining balance due, which included the late payment penalty and interest, pursuant to installment agreement payments in 2017 and 2018 and a lump sum payment of $9,655.92 on March 28, 2018.[3]

3. Appellants filed a claim for refund, which FTB denied on June 19, 2018. This timely appeal followed.

DISCUSSION

R&TC section 19132, subdivision (a)(1)(A), 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.) The late payment penalty has two parts. The first part of the penalty is 5 percent of the unpaid tax. (R&TC, § 19132, subd. (a)(2)(A).) The second part of the penalty is 0.5 percent per month, or a portion of a month, calculated on the outstanding balance. (R&TC, § 19132, subd. (a)(2)(B).) The aggregate amount of the penalty may not exceed 25 percent of the total unpaid tax. (R&TC, § 19132, subd. (a)(3).)

The late payment penalty does not apply when the failure to pay is due to reasonable cause and not willful neglect. The taxpayer bears the burden of proving that both conditions existed. (*Appeal of Roger W. Sleight* (83-SBE-244) 1983 WL 15615.) [4] 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 Robert T. and M.R. 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. (*Id.*)

---

[2] The original due date was April 18, 2017, because April 15th and 16th fell on a Saturday and Sunday, respectively, and April 17th was a federal holiday. (R&TC, § 18566; see also Cal. Code Regs., tit. 18, § 18566.)

[3] Appellants also reduced their original tax liability by filing an amended return on September 26, 2017, reporting a reduced tax liability of $23,439.

[4] There is no evidence in this record showing that appellants engaged in willful neglect. Thus, we will focus our analysis on whether appellants have shown reasonable cause.

Appellants stated that they withdrew funds from a retirement account for the first time and were unaware of the extent of tax they would owe. However, ignorance of the law does not excuse compliance with statutory requirements. (*Appeal of J. Morris and Leila G. Forbes* (67-SBE-042) 1967 WL 1384; *Appeal of Diebold, Inc*. (83-SBE-002) 1983 WL 15389.) As the Supreme Court held in *United States v. Boyle* (1985) 469 U.S. 241, 252, "[i]t requires no special training or effort to ascertain a deadline and make sure that it is met." In *Appeal of Diebold, Inc.*, *supra*, the Board of Equalization stated: "[a]ppellant did not exercise ordinary business care and prudence when it failed to acquaint itself with the California tax law requirements." An ordinarily intelligent and prudent businessperson would have conducted research to understand the tax implications of withdrawing retirement income and would have planned for sufficient withholding or otherwise timely payment of the associated tax and any early withdrawal penalty. However, appellants have not presented evidence of any efforts on their part to undertake such actions here. Therefore, appellants have not shown reasonable cause for their failure to timely pay the tax due.

Appellants argue that the Internal Revenue Service (IRS) abated their federal late payment penalty. However, a review of the letter from the IRS shows that the IRS abated the penalty due to first-time abatement/clean compliance history and not on the basis of reasonable cause. California law requires a finding of reasonable cause for the abatement of the late payment penalty and, therefore, there is no authority for FTB to follow the federal determination.

HOLDING

Appellants have failed to establish reasonable cause for failing to timely pay tax.

DISPOSITION

FTB's action is sustained.

DocuSigned by:
Neil Robinson
8A2E234444DB4A6...
Neil Robinson
Administrative Law Judge

We concur:

DocuSigned by:
Josh Lambert
B90E40A720E3440...
Josh Lambert
Administrative Law Judge

DocuSigned by:
Tommy Leung
0C90542BE88D4E7...
Tommy Leung
Administrative Law Judge