OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:

JILL PRICE

OTA Case No. 18093848

Date Issued: November 4, 2019

OPINION

Representing the Parties:

For Appellant: Jill Price, Taxpayer

For Respondent: Nancy E. Parker, Tax Counsel IV

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

A. KWEE, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Jill Price (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant's claim for refund of $3,102.16[1] for the 2017 tax year. This matter is being decided based on the written record because appellant waived the right to an oral hearing.

ISSUES

1. Whether appellant established a basis for abatement of the late payment penalty.
2. Whether appellant established a basis for abatement of the underpayment of estimated tax penalty (estimated tax penalty).

FACTUAL FINDINGS

1. Appellant filed a California Resident Income Tax Return (Form 540) for the 2017 tax year on May 18, 2018, reporting federal adjusted gross income (AGI) of $1,117,408,

[1] FTB's notice of action denied appellant's claim for refund for $2,306.16 (representing the late payment penalty), plus applicable interest. Appellant's refund claim also disputed the $796 estimated tax penalty, and FTB has addressed it on appeal; therefore, we too address this penalty on appeal and have included it here (i.e., $2,306.16 + $796 = $3,102.16). Appellant has not, at any time, disputed interest; therefore, we do not address interest, except to note that FTB has conceded, on appeal, that it will refund any interest paid that had accrued on the late-paid tax liability for the period from April 15, 2018, through April 30, 2018.

California taxable income of $1,103,433, and total tax of $118,183. After claiming $64,747 in tax withholdings, appellant reported tax due of $53,436. Appellant self-assessed an estimated tax penalty of $1,310 and paid the remaining amount due, $54,746, with her return on May 18, 2018.

2. On or about July 15, 2018, appellant filed a claim for refund of the late payment penalty and the estimated tax penalty, on the basis that she was affected by a federally declared natural disaster (California wildfires, flooding, and mudflows from December 2017 to January 2018) and other extenuating circumstances. Appellant contends that she resided with her parents and cared for her father during this time period, and that her parent's house was a four-hour drive from her house. In support, appellant submitted her father's medical records, which state that her father had hip replacement surgery in late 2017, suffered from dementia, and required 24-hour care. Appellant also submitted a letter from her friend, Holliday McManigal, who lost her home and her spouse during the natural disaster. In the letter, Holliday McManigal states that appellant let her and her daughter live in appellant's home for four months while her family recovered from losing their home.

3. By letter dated August 8, 2018, FTB notified appellant that it made changes to her tax return, which resulted in a $13,141.83 refund. According to the notice, FTB made the following changes: (1) reduced the estimated tax penalty from $1,310 (as calculated by appellant) to $796; (2) increased the amount of appellant's tax payments and allowances by $15,000 on account of an estimated tax payment applied from appellant's prior year tax return; and (3) assessed a late payment penalty of $2,306.16, plus interest. FTB's changes resulted in a net overpayment of $13,141.83, which FTB refunded to appellant.

4. On September 14, 2018, FTB denied appellant's claim for refund. This timely appeal followed.

5. On January 25, 2019, FTB conceded that appellant's payment due date for the fourth quarter estimated tax, and the return filing due date, was extended until April 30, 2018, because appellant resided in an area for which the Federal Emergency Management Agency had issued a Major Disaster Declaration. The Major Disaster Declaration covers the period December 4, 2017, through January 31, 2018, due to wildfires and flooding

(DR-4353).[2] The Internal Revenue Service (IRS) extended payment and filing due dates until April 30, 2018, for affected taxpayers.[3] The fourth quarter 2017 estimated tax payment was originally due January 15, 2018, and the return was originally due on April 15, 2018. As a result of the extension, FTB concedes that the late payment penalty be reduced by $192.18, to a revised penalty of $2,113.98, and that the estimated tax penalty be reduced by $262.53, to a revised penalty of $533.47. FTB further concedes that interest be adjusted to reflect the extended due date of April 30, 2018, which FTB estimates will result in a refund of approximately $63.36 in overpaid interest.

DISCUSSION

Issue 1 - Whether appellant is entitled to abatement of the late payment penalty.

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).) The late payment penalty is the sum of two figures that may not exceed 25 percent of the unpaid tax. (R&TC, § 19132(a)(2).) The first addend is five percent of the tax that remained unpaid as of the due date. (R&TC, § 19132(a)(2)(A).) The second addend is .5 percent of the unpaid tax balance per month for each month, or portion of a month, that the tax remains unpaid after the due date, not to exceed 40 months. (R&TC, § 19132(a)(2)(B).) For these purposes, the due date for payment of the tax is determined without regard to any extension of time to file the return. (R&TC, § 19001.)

California conforms to federal law and allows for extensions of time to file and pay when the IRS determines that the taxpayer was affected by a federally declared disaster. (R&TC, § 18572 [incorporating Internal Revenue Code (IRC), § 7508A].) FTB concedes that appellant was affected by a federally declared disaster, beginning December 4, 2017. As such, appellant’s time to file and pay was extended until April 30, 2018, which is the extended due date as determined by the IRS for victims of Major Disaster Declaration DR-4353. Appellant did not pay the amount of tax reported on her return until May 18, 2018, which is nineteen days after the April 30, 2018 due date. Therefore, a $2,113.98 late payment penalty applies. This amount is

[2] < www.fema.gov/disaster/4353 >

[3] < www.irs.gov/newsroom/tax-relief-for-victims-of-november-8-wildfires-in-california >

equal to five percent of the unpaid tax amount ($1,921.80), plus an additional .5 percent of the unpaid tax for the period that the amount remained unpaid ($192.18).[4]

Appellant does not dispute the above calculation of the penalty. Instead, appellant requests abatement due to reasonable cause. Appellant contends that she was unable to timely pay her taxes because, after the California wildfires in her area, she moved in with her parents and then had to care for her father full-time, due to his hip replacement surgery and dementia. Additionally, appellant contends that she loaned her house to her friend, another victim of the natural disaster, and did not want to disturb her friend by retrieving her tax records or the passwords to her financial accounts. Separately, appellant contends she was unable to leave her father's side long enough to go home and obtain necessary tax documents. Finally, appellant contends that she did not check in again with her fund manager after November to verify if any tax payment was due because she thought her December 31, 2017 estimated payment was sufficient to cover her liabilities.

A tax determination is generally presumed correct and, therefore, a taxpayer has the burden of establishing reasonable cause. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509, 514; *Appeal of Myers* (2001-SBE-001) 2001 WL 37126924 [late-filing penalty]; *Appeal of Scott* (83-SBE-094) 1983 WL 15480 [late payment penalty].) In order for a taxpayer to establish that a failure to act was due to reasonable cause, the taxpayer must show that the failure occurred despite the exercise of ordinary business care and prudence, or that cause existed as would prompt an ordinarily intelligent and prudent businessman to have so acted under similar circumstances. (*Appeal of Bieneman* (82-SBE-148) 1982 WL 11825; *Appeal of Tons* (79-SBE-027) 1979 WL 4068.)

A contention that a taxpayer was unable to obtain the information necessary to timely file a return or pay a tax liability, in absence of evidence establishing the "continuity of [the taxpayer's] efforts to secure the necessary information," does not constitute reasonable cause for purposes of penalty relief. (*Beran v. Commissioner* (1980) T.C. Memo. 1980-119.) On the other hand, the serious illness of the taxpayer or a member of his or her immediate family is a circumstance which the courts have acknowledged may constitute reasonable cause for penalty abatement. (*McMahan v. Commissioner* (2nd Cir. 1997) 114 F.3d 366, 369 [citing the Internal

[4] Appellant separately requested abatement of the five percent portion of $1,921.80, and the monthly portion of $384.36 (reduced on appeal to $192.18). For purposes of analysis, we discuss this as a single dispute of the late payment penalty in its entirety.

Revenue Manual].) In order for serious illness to constitute reasonable cause, the illness must continuously prevent the taxpayer from filing a tax return or paying the tax through the date the return was filed or the payment was actually made. (*Appeal of Halaburka* (85-SBE-025) 1985 WL 15809; *Appeal of James* (83-SBE-009) 1983 WL 15396; *Appeal of Seaman* (75-SBE-080) 1975 WL 3564.) Thus, penalty abatement is inapplicable if the difficulties at issue simply caused the taxpayer to sacrifice the timeliness of one aspect of his or her affairs to pursue other aspects. (*Appeal of Orr* (68-SBE-010) 1968 WL 1640). In summary, a taxpayer's selective inability to perform tax obligations, while participating in regular business activities, does not establish reasonable cause. (*Watts v. Commissioner* (1999) T.C. Memo. 1999-416.)

The issue we must address is whether appellant established reasonable cause for making her payment nineteen days after the due date, which had been extended to April 30, 2018, on account of the natural disaster. FTB contends that appellant failed to document continuous incapacity to justify the late-payment.

Here it is undisputed that appellant, herself, was not medically incapacitated. Instead, appellant's claim for reasonable cause is based, in part, on her need to care for her father during this period. Appellant contends that, after the natural disaster, she moved in with her parents to provide full-time care for her father after his surgery. We find this contention credible, because appellant provided her father's medical records to document his surgery, dementia, and need for full-time care. Additionally, appellant contends that her financial records, including passwords to access her accounts via the internet, were stored at her residence, and it was not practicable for her to access her financial records because during this timeframe she loaned her house to her friend, Holliday McManigal. Appellant contends it would take eight hours of driving (roundtrip) to retrieve the requisite financial records. We further find these contentions credible because appellant provided a signed statement from Holliday McManigal, stating that she resided at appellant's residence for four months following the mudslides that took away her home in January of 2018, a GoFundMe printout for her son, who was hospitalized during this timeframe due to injuries sustained when the house was destroyed, and an obituary to document additional tragedies that befell her friend as a result of the natural disaster.

While individually, these explanations would not excuse appellant's late payment, we believe that taking all the unique facts and circumstances of this appeal as a whole, appellant established reasonable cause. We find that appellant was unable to timely access her financial records because she had been impacted by a federally declared natural disaster, she was caring for her father full-time, and she had lent her residence to a friend who had been displaced by the same natural disaster. Therefore, we find that during this 19-day timeframe appellant's friend (who had lost her husband and her home during the natural disaster) and appellant (because she lent her residence to this friend, and had moved four hours' drive away) were still impacted by the natural disaster. The IRS has already determined that this specific natural disaster is a basis for extending the payment due date. Therefore, we abate the late payment penalty on the basis of reasonable cause and lack of willful neglect.

Issue 2 - Whether appellant is entitled to abatement of the estimated tax penalty.

California conforms to IRC section 6654, and imposes an estimated tax penalty for the failure to timely make estimated income tax payments. (R&TC, § 19136(a); IRC, § 6654.) The estimated tax penalty is similar to an interest charge, and applies from the due date of the estimated tax payment until the date it is paid. (IRC, § 6654(b)(2).) Estimated tax payments are generally required of persons who owe more than $500 in tax, after applying income tax withholdings and credits. (R&TC, § 19136(c)(2).) Estimated tax payments are due four times a year, in the amount of 25 percent of the required annual payment, on: April 15, June 15, September 15, and the final payment due January 15 of the following tax year. (IRC, § 6654(c).) In the case of an individual reporting adjusted gross income (AGI) in excess of $1 million, the required annual payment is 90 percent of the tax shown on the return for the taxable year.[5] (R&TC, § 19136.3(a); IRC, § 6654(d)(2)(B).) An individual with uneven income during the year may use an annualized income installment method in lieu of making four equal payments. (R&TC, § 19136.1(b)(1); IRC, § 6654(d).)

[5] As relevant, California does not fully conform to the federal safe harbor in IRC section 6654(d)(1)(B)(ii), for taxpayers making a required annual payment of 110 percent of the tax shown on the return for the prior year. R&TC section 19136.3 provides that for tax years beginning on or after January 1, 2009, the federal safe harbor in IRC section 6654(d)(1)(B)(ii) does not apply to individuals reporting California AGI in excess of $1 million. The California AGI threshold is $500,000 in the case of a married individual filing a separate return. (R&TC, § 19136.3(a).) Appellant reported California AGI of $1,103,433; thus, the safe harbor is inapplicable.

There is no general reasonable cause exception to the estimated tax penalty.[6] Relief from the estimated tax penalty is not available upon a mere showing of reasonable cause or a lack of willful neglect; thus, extenuating circumstances are irrelevant. (*Farhoumand v. Commissioner* (2012) T.C. Memo. 2012-131; *Estate of Ruben v. Commissioner* (1960) 33 T.C. 1071, 1072; *Appeal of Weaver Equipment Co.* (80-SBE-048) 1980 WL 4976; see, e.g., Internal Revenue Manual (IRM) 20.1.3.1.6.1 (12-10-2013).) Instead, the law allows for abatement of the estimated tax penalty if, by reason of casualty, disaster, or other unusual circumstances, imposition of the penalty would be against equity and good conscience. (IRC, § 6654(e)(3)(A).) Thus, for example, the IRS may abate the estimated tax penalty in situations where a tax law change, disaster such as the taxpayer's books and records being destroyed by fire or other casualty, required accounting method change, or a Government action or inaction, caused extreme difficulty in estimating the tax. (IRS Field Service Advisory (Jun. 2, 1994) 1994 WL 1725487 (FSA).) In summary, the exception for unusual circumstances is considerably narrower than reasonable cause.

As discussed, the due date for appellant to make her final estimated tax payment for 2017 was extended until April 30, 2018, because appellant was affected by the California wildfires beginning December 4, 2017. Appellant did not make the required payment until she filed her return on May 18, 2018. Based on the totality of the circumstances, including the natural disaster, FTB concedes that abatement of the estimated tax penalty, in the amount of $262.53, is warranted. This amount represents the estimated tax penalty imposed for appellant's failure to make her final estimated tax payment for 2017 by the extended due date: April 30, 2018. Therefore, the only issue remaining for us to decide is abatement of the $533.47 estimated tax penalty imposed for appellant's failure to make her third estimated tax payment for 2017 by the due date: June 15, 2017. Here, appellant does not dispute the calculation of the penalty, which was based on the annualized income installment method. Furthermore, it is undisputed that appellant was not affected by the California wildfires on June 15, 2017, and this due date was also prior to her father's hip replacement surgery. Appellant has offered no other explanation for

[6] Nevertheless, the estimated tax penalty will not apply if it is established that either: the failure to timely pay the estimated tax payment was due to reasonable cause, *and* the taxpayer retired after reaching age 62; or the taxpayer 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).) Appellant has not alleged disability and was age 52 at the end of the taxable year; therefore, we do not discuss this further.

her failure to timely make her June 15, 2017 estimated tax payment. As such, we have no basis to abate this penalty.

HOLDINGS

1. Appellant established a basis for abatement of the late payment penalty.
2. Appellant failed to establish a basis for any further abatement of the estimated tax penalty.

DISPOSITION

FTB's action is sustained in part, and reversed in part. First, FTB's action is modified to accept FTB's concessions that (1) the estimated tax penalty shall be reduced by $262.53 (from $796.00 to $533.47) and (2) that interest charged for the period from April 15, 2018, to April 30, 2018 shall be deleted. Second, we find that the late payment penalty of $2,306.16 shall be abated in full on the grounds of reasonable cause. In all other respects, FTB's determination is sustained.

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Andrew J. Kwee
Administrative Law Judge

We concur:

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Jeffrey I. Margolis
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