

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
PAMELA A. YODER

) OTA Case No. 18113955
)
) Date Issued: December 16, 2019
)
)

OPINION

Representing the Parties:

For Appellant: Jeff Hipshman, CPA

For Respondent: Meghan McEvilly, Tax Counsel III

D. CHO, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Pamela A. Yoder (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant's claim for refund of \$12,721.18¹ for the 2017 taxable year.

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

ISSUES

1. Whether appellant has established that the late-payment penalty should be abated.
2. Whether appellant has established that the underpayment of estimated tax penalty should be abated.

FACTUAL FINDINGS

1. On April 15, 2017, appellant made an estimated tax payment of \$79,000² toward her 2017 tax liability.

¹This amount is comprised of a \$9,672.18 late-payment penalty and a \$3,049 underpayment of estimated tax penalty.

²This amount is comprised of a \$69,542 estimated tax payment and a \$9,458 transfer of credit from appellant's 2016 taxable year.

2. On June 14, 2017, appellant attempted to make an estimated tax payment of \$106,000 toward her 2017 tax liability by use of FTB's Web Pay system. However, appellant did not enter her correct bank information, and the payment was not processed.
3. On December 21, 2017, appellant attempted to make an estimated tax payment of \$80,000 toward her 2017 tax liability by use of FTB's Web Pay system. However, appellant made the same mistake of not entering her bank account information correctly, which resulted in the payment not being processed.
4. On April 15, 2018, appellant filed her 2017 tax return and reported an overpayment of \$24,797, which was based on a total tax due of \$240,203 and purported total payments of \$265,000.
5. FTB determined that appellant had only made one payment of \$79,000 on April 15, 2017. FTB adjusted appellant's 2017 tax return to reflect total payments of \$79,000 instead of \$265,000. As a result, appellant had a tax liability of \$161,203 that had not been paid by the April 15, 2018 deadline. Accordingly, FTB assessed a late-payment penalty of \$9,672.18 and an underpayment of estimated tax penalty of \$3,049. FTB notified appellant of this liability through a Notice of Tax Return Change – Revised Balance dated June 11, 2018.
6. Appellant made a payment of the entire liability, which FTB accepted and credited to her account effective June 11, 2018.
7. By letter dated June 26, 2018, appellant filed a claim for refund of the penalties, arguing that she received confirmation notices from FTB's Web Pay system. As a result, it was appellant's belief that the payments had successfully gone through. Therefore, appellant believed that she acted reasonably and was entitled to abatement of the penalties.
8. FTB denied the claim for refund, and this timely appeal followed.

DISCUSSION

Issue 1. Whether appellant has established that the late-payment penalty should be abated.

R&TC section 19132 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 date prescribed for payment. However, the late-payment penalty will not apply if the taxpayer establishes that the failure to make a timely payment of tax was due to a reasonable cause and not due to willful

neglect. (R&TC, § 19132(a)(1).) Reasonable cause exists if it can be shown that the taxpayer acted as an ordinarily intelligent and prudent businessperson would have acted under similar circumstances. (*Appeal of Tons* (79-SBE-027) 1979 WL 4068.) The burden of proof is on the taxpayer to show that the failure to make a timely payment was the result of reasonable cause and not due to willful neglect, and the late payment occurred despite the exercise of ordinary business care and prudence. (*Appeal of Sleight* (83-SBE-244) 1983 WL 15615; *Appeal of Scott* (83-SBE-094) 1983 WL 15480.)

Appellant's claim for refund of the late-payment penalty is based on her contention that the late payment was attributable to reasonable cause and not to willful neglect. Appellant states that she made an error by failing to input one number in her bank account information while using FTB's Web Pay system. When appellant received the confirmation from the Web Pay system, she believed that the payment was successful. In addition, when she discovered the error, she promptly paid the liability.

We hold that these circumstances do not establish reasonable cause. Appellant attempted to make her estimated tax payments of \$106,000 and \$80,000 on June 14, 2017, and December 21, 2017, respectively, and the confirmation pages state, "Allow up to 2 business days from the payment date for your bank account to reflect your payment." Thus, appellant should have been aware of the failed payment when her bank account did not reflect a payment shortly after the respective payment dates. Furthermore, we would expect a reasonably prudent businessperson exercising due care and diligence to monitor their bank account and determine whether a scheduled payment to FTB was in fact processed. (See *Appeal of Scanlon* (2018-OTA-075P).)

Lastly, there is no dispute that appellant ultimately paid the liability with an effective payment date of June 11, 2018, which is approximately one year after the first attempted payment on June 15, 2017. A reasonably prudent businessperson would have noticed that their bank account had an extra \$186,000 at some point during the year long period between appellant's failed payments and the ultimate payment date. In addition, although appellant promptly paid the liability when the oversight was discovered, these actions occurred after the payment due date, and a finding of reasonable cause is only applicable for actions undertaken prior to the payment due date. Therefore, based on the foregoing, appellant has not established reasonable cause for the late payment of her 2017 tax liability.

Issue 2. Whether appellant has established that the underpayment of estimated tax penalty should be abated.

Internal Revenue Code (IRC) section 6654 imposes an addition to tax, which is treated and often referred to as a penalty, where an individual fails to timely pay estimated tax.³ Subject to certain exceptions not relevant to the issues on appeal, R&TC section 19136 incorporates IRC section 6654. The estimated tax penalty is similar to an interest charge in that it is calculated by applying the applicable interest rate to the underpayment of estimated tax. (See IRC, § 6654(a) [calculating the estimated tax penalty by reference to the interest rate imposed on underpayments]; R&TC, § 19136(b) [referring to R&TC, § 19521 which, with modification, conforms to the federal interest provisions in IRC, § 6621].)

There is no provision in the IRC or R&TC that allows the estimated tax penalty to be abated based solely on a finding of reasonable cause. As a result, there is no general reasonable cause exception to the imposition of the estimated tax penalty. (*Appeal of Johnson* (2018-OTA-119P); *Adams v. Commissioner*, T.C. Memo. 2013-7.) The estimated tax penalty is mandatory unless the taxpayer establishes that a statutory exception applies. (*Appeal of Johnson, supra*; *Nitschke v. Commissioner*, T.C. Memo. 2016-78.) Although there is no provision allowing for abatement of the estimated tax penalty based solely on reasonable cause, IRC section 6654(e)(3)(A) provides that the taxing agency may waive the estimated tax penalty if it determines that, “by reason of casualty, disaster, or other unusual circumstances the imposition of [the estimated tax penalty] would be against equity and good conscience.”⁴

Appellant’s sole contention is that there was reasonable cause for the underpayment of the estimated tax payments. However, there is no reasonable cause exception to warrant the abatement of this penalty. Furthermore, appellant has not argued that there are any other unusual circumstances present in this appeal that would establish that the imposition of the estimated tax

³ Where estimated tax payments are due, R&TC section 19136.1(a)(2) generally requires, for California income tax purposes, that the payments be made in installments on or prior to April 15 and June 15 of the applicable tax year, and January 15 of the subsequent tax year. For federal income taxes, an additional installment is also due by September 15 of the applicable tax year. (See IRC, § 6654(c).)

⁴ IRC section 6654(e)(3)(B) provides another potential avenue for waiver of the penalty where the taxing agency determines that (i) during the applicable tax year or the preceding year, the taxpayer either retired after having attained age 62, or became disabled, and (ii) the underpayment was due to “reasonable cause” and not due to willful neglect. However, there is no evidence or argument that this provision is applicable.

penalty would be against equity and good conscience. Therefore, we find that appellant is liable for the estimated tax penalty.

HOLDINGS

1. Appellant has not established that the late-payment penalty should be abated due to reasonable cause and not willful neglect.
2. Appellant has not established that the estimated tax penalty should be abated.

DISPOSITION

FTB's denial of appellant's claim for refund is sustained.

DocuSigned by:



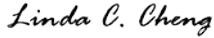
7B28A07A7E0A43D...

Daniel K. Cho

Administrative Law Judge

We concur:

DocuSigned by:



8B585BEAC08946D
Linda C. Cheng

Administrative Law Judge

DocuSigned by:



CAZEU33C0906484
Douglas Bramhall

Administrative Law Judge