

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18042912
K. WALIGORA)
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OPINION

Representing the Parties:

For Appellant: Tracy Wu, Tax Appeals Assistance Program (TAAP)¹

For Respondent: Christopher T. Casselman, Tax Counsel IV

For Office of Tax Appeals: William J. Stafford, Tax Counsel III

T. LEUNG, Administrative Law Judge: This appeal is made pursuant to section 19324 of the Revenue and Taxation Code (R&TC) from the action of the Franchise Tax Board (FTB) in denying appellant’s claim for refund of \$381.67² for the 2016 taxable year.

Appellant waived her right to an oral hearing and therefore this appeal is being decided on the written record.

ISSUES

1. Whether appellant has demonstrated reasonable cause to support abatement of the late-filing penalty.
2. Whether appellant has demonstrated that she is entitled to abatement of the underpayment of estimated tax penalty.

¹ Appellant filed her own appeal letter. Carlos Robles of TAAP filed appellant’s reply brief. Jordan Gonzalez of TAAP filed appellant’s supplemental brief.

² This amount consists of a late-filing penalty of \$363.00 and an estimated tax penalty of \$18.67.

FACTUAL FINDINGS

1. Appellant filed her separate 2016 California Personal Income Tax (PIT) return late, on November 15, 2017.
2. Appellant's return reflected a total tax liability of \$1,452, no withholdings, and included a payment of \$1,483.
3. After receiving appellant's return, FTB sent appellant a Notice of Tax Return Change, showing a balance owed of \$394.60, which included a late-filing penalty of \$363.00, an estimated tax penalty of \$18.67, and interest of \$43.93.
4. Appellant subsequently paid all of the amounts stated (i.e., the late-filing penalty, the adjusted estimated tax penalty, and applicable interest) and filed a timely claim for refund, asserting that the penalties and interest should be abated for reasonable cause, as (until the 2016 taxable year) appellant's husband (Gorman) had always filed the couple's tax returns jointly and he had not informed appellant that he had filed a 2016 California return as married-filing-separately.
5. After reviewing the matter, FTB denied appellant's claim for refund.
6. For each of the 2017 and 2018 taxable years, appellant filed a separate PIT return by the original due date. For each of the 2015 and 2014 taxable years, appellant and Gorman filed a joint PIT return by the extended due date.
7. For the 2015 taxable year, appellant and Gorman were assessed and paid late payment and estimated tax penalties; for the 2014 taxable year, appellant and Gorman were assessed and paid late payment penalties.
8. Appellant did not take advantage of an opportunity to file an additional brief with Office of Tax Appeals to further document (e.g., provide a copy of the police report) her explanation regarding the circumstances which caused the late filing.

DISCUSSION

Issue 1 – Whether appellant has demonstrated reasonable cause to support abatement of the late-filing penalty.

California imposes a penalty for failing to file a return by its due date, unless the failure to file was due to reasonable cause and not due to willful neglect. (R&TC, § 19131.) To establish reasonable cause, a taxpayer “must show that the failure to file timely returns 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 Tons* (79-SBE-027) 1979 WL 4068.) Ignorance of a filing requirement or a misunderstanding of the law generally does not excuse a late filing. (*Appeal of Diebold, Incorporated* (83-SBE-002) 1983 WL 15389.) In general, each taxpayer has a personal, non-delegable obligation to file a timely return. (*Appeal of Boehme* (85-SBE-134) 1979 WL 4224.)

Here, appellant has not alleged or provided any evidence (letters, emails, etc.) demonstrating that she communicated with Gorman before the original due date of April 15, 2017, as to whether they would be filing a joint income tax return as they had done previously. Further, appellant has not provided any evidence demonstrating that she attempted to contact Gorman in the time between his alleged “mental break” (which required a call to the sheriff) on July 26, 2017, and the extended due date of October 17, 2017, in order to inquire whether he had filed (or would be filing) a joint return for them. This is particularly significant given the fact that appellant had moved out of the family home to live with her mother as of July 26, 2017, and her signature would have been needed for a joint return to be filed. Further, we note that appellant’s asserted inability to access the family home to obtain her tax documents does not appear to have imposed a substantial time delay in obtaining her tax information once she allegedly learned of the delinquency on November 5, 2017, as appellant was able to access the documents from that home within a week of discovering the delinquency. In addition, we note that appellant has not provided any evidence that she attempted to obtain her tax information from other sources, such as the IRS, her employer or financial institution. Also, appellant has not explained why she could not have filed her 2016 California PIT return timely based on the best information available, especially given the fact that the return was relatively straightforward, and then file an amended return later if needed. In short, appellant has not provided us with sufficient evidence necessary for us to find reasonable cause for abatement of the late-filing penalty.

Issue 2 – Whether appellant has demonstrated that she is entitled to abatement of the estimated tax penalty.

R&TC section 19136 incorporates by reference, with certain modifications, Internal Revenue Code (IRC) section 6654, which imposes a penalty for the underpayment of estimated

tax where an individual taxpayer's installment payments are less than the amounts due at the end of the installment periods. The amount charged is similar to an interest charge and applies from the date the estimated tax payment was due until the earlier of the date it is paid or the 15th day of the fourth month after the tax year (i.e., tax payment due date). For 2016, payments were generally due on April 15 (30 percent of the required annual payment), June 15 (40 percent), and September 15 (0 percent) of the taxable year, and January 15 (30 percent) of the succeeding taxable year. (IRC, § 6654(d)(1), as modified by R&TC, § 19136.1(a)(2).)

Neither R&TC section 19136 nor IRC section 6654 allows for relief from the estimated tax penalty upon a mere showing of "reasonable cause" or a "lack of willful neglect." (*Appeal of Weaver Equipment Company* (80-SBE-048) 1980 WL 4976.) There are only two bases for a waiver of the estimated tax penalty, and those bases are set forth in IRC section 6654(e)(3), to which California conforms:

1. IRC section 6654(e)(3)(A) provides for a waiver of the penalty if the government determines that, by reason of a casualty, disaster, or other unusual circumstances, the imposition of the penalty would be against equity and good conscience.
2. IRC section 6654(e)(3)(B) provides for a 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.

In relation to IRC section 6654(e)(3)(A), the Internal Revenue Manual (IRM)³ provides:

The waiver provisions of IRC section 6654(e)(3)(A) are not equivalent to reasonable cause. For example, reliance on the advice of a competent tax advisor may constitute reasonable cause that would warrant relief from other penalties, but it does not provide a basis for a waiver of the estimated tax penalty under IRC section 6654(e)(3)(A). (IRM, Section 20.1.3.3.2.1.2 (December 10, 2013).)

The IRM provides the following examples of situations where a waiver may be granted if it is determined that the imposition of the penalty would be against equity and good conscience:

- A. The taxpayer's records are destroyed by fire or flood or other natural disaster See IRM 20.1.3.1.5.2.1.

³The IRM merely interprets the Internal Revenue Service's position, and it does not have the force or effect of law.

- B. The taxpayer becomes seriously ill or is seriously injured and is unable to manage his or her affairs.
- C. The taxpayer designates that an overpayment of tax shown on a prior return is to be credited against estimated tax, but the overpayment is offset for either past-due child support or non-tax federal debt under IRC section 6402(c), and the taxpayer is not notified of the offset before the due date of the estimated tax installment. (IRM, Section 20.1.3.3.2.1.2 (December 10, 2013).)

In *Farhoumand v. Commissioner*, T.C. Memo. 2012-131, the Tax Court held that stock market volatility (i.e., bursting of the dot-com bubble) did not qualify as an “unusual circumstance” under IRC section 6654(e)(3)(A) for purposes of waiving the estimated tax penalty. Furthermore, although the taxpayers argued that their actions constituted an “honest mistake” based on a misunderstanding about the tax law, the court held that the imposition of the estimated tax penalty did not violate “equity and good conscience” under IRC section 6654(e)(3)(A).

Appellant has not alleged (or shown) that she was disabled (or that she retired after reaching the age of 62) within the meaning of IRC section 6654(e)(3)(B); therefore, this potential avenue of relief is unavailable.

Similarly, appellant has not shown that she 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). As noted above, this is a higher standard than a “reasonable cause” standard. (See *Farhoumand v. Commissioner, supra*; *Appeal of Weaver Equipment Company, supra*.) Any argument that appellant was ignorant of the law and/or did not anticipate the amount of estimated payments would be in the nature of reasonable cause arguments.

HOLDINGS

Appellant has not demonstrated reasonable cause to support abatement of the late-filing penalty. Appellant has not demonstrated that she is entitled to abatement of the estimated tax penalty.

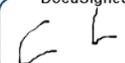
DISPOSITION

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

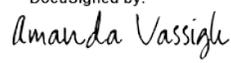
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Tommy Leung
Administrative Law Judge

We concur:

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Andrew J. Kwee
Administrative Law Judge

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Amanda Vassigh
Administrative Law Judge

Date Issued: 3/2/2020