

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18063301
T. KILROY AND)
K. KILROY)
_____)

OPINION

Representing the Parties:

For Appellants: Heena Shah, EA

For Respondent: David Muradyan, Tax Counsel III

For Office of Tax Appeals: Sheriene Anne Ridenour, Tax Counsel IV

A. VASSIGH, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, T. Kilroy and K. Kilroy (appellants) appeal an action by the respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$8,185 for the 2016 tax year.

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

ISSUES

1. Whether appellants have shown reasonable cause for failing to timely pay tax.
2. Whether appellants have demonstrated that the underpayment of estimated tax penalty should be abated.
3. Whether appellants have shown that they are entitled to the abatement of interest.

FACTUAL FINDINGS

1. On June 14, 2016, appellants attempted to schedule an estimated tax payment of \$60,000 for the 2016 tax year using FTB’s electronic Web Pay system. The Web Pay system provided appellants a confirmation page showing the date and time of the payment request, the amount of the payment, and related information.

2. The confirmation page stated that if the entered bank account has insufficient funds, the banking information entered is incorrect, or the bank account is closed, the financial institution may reject the payment request. In this case, since the banking information entered was incorrect, the scheduled payment did not occur.
3. On October 15, 2017, appellants filed a joint 2016 California Nonresident or Part-Year Resident Income Tax Return (Form 540NR). On their return, appellants reported a tax liability (after credits) of \$98,024, \$97,599 in estimated tax payments (which included the \$60,000 amount that had not been successfully transmitted to FTB), and \$69 in tax withholdings. Appellants reported tax due of \$356, self-assessed interest of \$8 and an underpayment of estimated tax penalty of \$73, for a balance due of \$437, which appellants remitted with their return.
4. FTB processed the return and decreased the reported estimated tax payments by \$60,000, from \$97,599 to \$37,599, based on FTB's records which indicated that appellants made only \$37,599 in estimated tax payments prior to filing their return.
5. On November 6, 2017, FTB issued appellants a Notice of Tax Return Change - Revised Balance, notifying appellants of an unpaid balance due in the amount of \$67,694.46, which consisted of unpaid tax of \$59,919 (i.e., \$98,024 - \$37,599 - \$69 - \$437), along with a late payment penalty of \$5,128.08, an estimated tax penalty of \$1,270.23, and interest of \$1,377.15.
6. In response, appellants requested abatement of the penalties and interest, and remitted payment in the amount of \$60,000. FTB processed the payment and sent appellants an Income Tax Due Notice, reflecting the penalties and interest that remained unpaid.
7. Appellants made two payments in January 2018, satisfying the outstanding balance. Thereafter, appellants filed a claim for refund for the penalties and interest, which FTB denied. This timely appeal followed.

DISCUSSION

Issue 1 - Whether appellants have shown reasonable cause for failing to timely pay tax.

R&TC section 19001 generally provides that the personal income tax imposed “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 provides that a late payment penalty is

imposed when taxpayers fail to pay the amount shown as due on the return on or before the due date of the return. The late payment penalty will be abated if the taxpayers show that the failure to make a timely payment of tax was due to reasonable cause and was not due to willful neglect. (R&TC, § 19132(a).)

To establish reasonable cause for the late payment of tax, taxpayers must show that their failure to make a timely payment of the proper amount of tax occurred despite the exercise of ordinary business care and prudence. (*Appeal of Sleight* (83-SBE-244) 1983 WL 15615; *Appeal of Curry* (86-SBE-048) 1986 WL 22783.) The taxpayers bear the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Appeal of Curry, supra*; see also *Appeal of Scott* (82-SBE-249) 1982 WL 11906.) A failure to pay will be considered due to reasonable cause if the taxpayers establish that they exercised ordinary business care and prudence in providing for the payment of their tax liability and were nevertheless either unable to pay the tax or would suffer undue hardship if they paid on the due date. (Treas. Reg. § 301.6651-1(c)(1); *Nasir v. Commissioner*, T.C. Memo. 2011-283.) The failure to timely remit the balance due on a tax liability caused by an oversight does not, by itself, constitute reasonable cause. (*Appeal of Risser* (84-SBE-044) 1984 WL 16123.)

Appellants initiated the process for making an estimated tax payment through FTB's Web Pay service in June 2016. Appellants provide a copy of an email from the Web Pay service confirming that appellants requested a payment of \$60,000 to be applied to their 2016 tax year account on June 14, 2016. Appellants argue that they relied on the Web Pay confirmation. However, the Web Pay confirmation page did not confirm that the payment has been made; it only confirmed that the request to debit a bank account had been made. The confirmation page notifies users that two business days should be allowed for the payment to be debited from the bank account, and if the entered bank account has insufficient funds, the banking information entered is incorrect, or the bank account is closed, the financial institution may reject the payment request.

The exercise of ordinary business care and prudence would have required appellants to confirm that their requested payment of \$60,000 occurred and, if there was a delay in the payment or failure for the payment to go through, to look into why and correct the problem. There is no evidence that any such steps were taken here. There is no indication that appellants

checked their bank account to determine whether the payment went through prior to the due date on April 15, 2016. Appellants failed to confirm their attempted estimated payment of June 14, 2016, had been successfully made when they erroneously claimed they had paid that amount on their 2016 tax return, which was filed over a year later, on October 14, 2017.

A taxpayer's oversight, even if understandable, does not demonstrate the exercise of ordinary business care and prudence. (*Appeal of Risser, supra.*) Appellants had provided erroneous bank account information and the payment never occurred. They could have, but failed to, check whether their payment was successful until after they were contacted by the FTB regarding the underpayment in their account. Appellants' conduct does not constitute reasonable cause.

While appellants argue that FTB should share some responsibility of notifying taxpayers when there is a problem with a scheduled payment, the timely payment of taxes is the taxpayer's responsibility.¹ Appellants' error in incorrectly entering their bank information, and not realizing that the requested payment had failed by checking their bank account balance, was due to an oversight and a lack of due diligence by appellants. As mentioned above, the failure to timely remit the balance due on a tax liability caused by an oversight does not, by itself, constitute reasonable cause. (*Appeal of Risser, supra.*) Accordingly, "[w]hile we sympathize with appellant[s'] unintentional error, these facts do not form a basis for granting relief from the penalt[y]." (*Ibid.*)

Regarding appellants' contentions that they have an otherwise excellent tax compliance history, appellants' good filing and payment history is not relevant to the abatement of the late payment penalty because there is no California legal authority which allows for an abatement of the penalty on those grounds.² R&TC section 19132 provides the only basis under California law to abate a late payment penalty (i.e., upon a showing that the failure to timely pay was due to reasonable cause and not due to willful neglect).

¹ We note that taxpayers have a personal and nondelegable duty to file timely tax returns. (*United States v. Boyle* (1985) 469 U.S. 241, 247 & 251.) The nondelegable duty relating to late filing in *Boyle* also applies in the late payment penalty context. (*Appeal of Berolzheimer* (86-SBE-172) 1986 WL 22860.)

² The California Legislature has considered and declined to adopt bills that would change California law to allow a first-time abatement for taxpayers with a history of filing and payment compliance. (See, e.g., Assembly Bill No. 1777 (2013-2014 Reg. Sess.).)

Issue 2 - Whether appellants have demonstrated that the underpayment of estimated tax penalty should be abated.

R&TC section 19136 incorporates by reference Internal Revenue Code (IRC) section 6654, which imposes an underpayment of estimated tax penalty upon individuals for failing to timely make required estimated income tax payments. (R&TC, § 19136(a); IRC, § 6654.) There is no reasonable cause exception for the underpayment of estimated tax penalty. (IRC, § 6654; R&TC, § 19136; *Farhoumand v. Commissioner*, T.C. Memo. 2012-131.) IRC section 6654(e)(3) provides limited exceptions to the imposition of the penalty if either of the following conditions are satisfied: (1) “by reason of casualty, disaster, or other unusual circumstances the imposition of [the penalty] would be against equity and good conscience”; or (2) the underpayment was due to reasonable cause and not to willful neglect, *and* the taxpayer retired at the age of 62 or older in the year at issue or the prior year, or, alternatively, he or she became disabled in the tax year for which the estimated tax payments were required to be made or in the preceding tax year.

Appellants do not dispute the calculation of the underpayment of estimated tax penalty imposed for the 2016 tax year. Instead, appellants contend that the underpayment of estimated tax penalty should be abated for the same reasons appellants provided for abatement of the late-filing penalty. As noted above, there is no reasonable cause exception for the underpayment of estimated tax penalty. (*Farhoumand v. Commissioner, supra.*) There are no arguments or evidence that appellants’ failure to make estimated tax payments for the 2016 tax year was due to the very narrow circumstances prescribed by IRC section 6654(e)(3)(A). The burden in this appeal is on appellants, and they have not demonstrated that they are eligible for the relief provided by IRC section 6654(e)(3). Therefore, appellants have not shown that the underpayment of estimated tax penalty should be abated.

Issue 3 - Whether appellants have shown that they are entitled to the abatement of interest.

Under R&TC section 19001, taxes due must be paid by the original due date of the return, and if not paid by that date, interest must be charged on the balance due from the time of the due date to the date payment was made, pursuant to section 19101. The imposition of interest on a tax deficiency is mandatory once it has been determined that the total tax due was not paid by the due date. (*Appeal of Kubo* (83-SBE-168) 1983 WL 15553.) Interest is not a

penalty but is compensation for a taxpayer's use of money that should have been paid to the state. (*Appeal of Yamachi* (77-SBE-095) 1977 WL 3905.) There is no reasonable cause exception to the imposition of interest, and interest accrues on the amount assessed as a deficiency regardless of the reason for the assessment. (*Appeal of Goodwin* (97-SBE-003) 1997 WL 258474.)

Interest may only be abated where authorized by law. To obtain relief from interest, appellants must show that they qualify under the provisions of R&TC sections 19104, 19112, or 21012. Appellants do not contend, and the record does not indicate, that they qualify for interest abatement under any of these provisions.³ Therefore, appellants have not shown that they are entitled to interest abatement.


³ The relief of interest under R&TC section 21012 is not relevant here, as FTB did not provide appellants with any written advice. R&TC section 19112 requires a taxpayer to make a showing of extreme financial hardship caused by a significant disability or other catastrophic circumstance. However, appellants make no such showing. Under R&TC section 19104, subdivisions (a)(1) and (2), FTB is authorized to abate or refund interest if there has been an unreasonable error or delay in the performance of a ministerial or managerial act by an employee of FTB. Here, appellants have not alleged any such errors or delays.

HOLDINGS

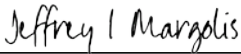
1. Appellants have not established that their failure to make a timely payment of tax was due to reasonable cause.
2. Appellants have not established that the underpayment of estimated tax penalty should be abated.
3. Appellants have not shown that they are entitled to the abatement of interest.

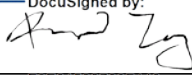
DISPOSITION

FTB’s action denying appellants’ claim for refund for the 2016 tax year is sustained.

DocuSigned by:

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 Amanda Vassigh
 Administrative Law Judge

We concur:

DocuSigned by:

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 Jeffrey I. Margolis
 Administrative Law Judge

DocuSigned by:

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 Richard Tay
 Administrative Law Judge

Date Issued: 3/12/2020