

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18124052
M. COSTA AND)
K. COSTA)
_____)

OPINION

Representing the Parties:

For Appellants: M. Costa and K. Costa

For Respondent: Leoangelo C. Cristobal, Tax Counsel

J. LAMBERT, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. Costa and K. Costa (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of a late payment penalty of \$39,924.33 and an underpayment of estimated tax (estimated tax) penalty of \$2,439.39 for the 2016 tax year.

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

ISSUES

1. Whether the late payment penalty may be abated.
2. Whether the estimated tax penalty may be abated.

FACTUAL FINDINGS

1. Appellants timely filed a 2016 California income tax return on October 10, 2017. Appellants reported withholdings of \$13,881, estimated tax payments of \$783,534, and an overpayment of \$130,302.
2. On October 30, 2017, FTB sent appellants a Notice of Tax Return Change informing them that it subtracted \$600,000 from the \$783,534 of estimated tax payments reported

on the return and calculated a revised balance due of \$522,402.96. FTB imposed a late payment penalty of \$39,924.33 and an estimated tax penalty of \$2,439.39.

3. Appellants paid the balance due and filed a timely claim for refund of the penalties, which FTB denied. This timely appeal followed.

DISCUSSION

Issue 1: Whether the late payment penalty may be abated.

R&TC section 19132 imposes a late payment penalty when a taxpayer fails to pay the amount shown as due on the return on or before the date prescribed for 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 may be abated if the taxpayer can 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, the taxpayer must show that the failure to make a timely payment occurred despite the exercise of ordinary business care and prudence. (*Appeal of Sleight* (83-SBE-244) 1983 WL 15615.)

Appellants contend that an attempted \$600,000 payment on December 29, 2016, did not get processed due to their accountant inadvertently leaving off one digit of their bank account number. Appellants' accountant states that he experienced difficult circumstances, such as moving to a new office after the previous office was damaged by a flood, which contributed to his mistake. As a matter of law, these circumstances do not establish reasonable cause. While we have no doubt that appellant-husband is a competent and reasonable business person, and that reasonable business people routinely hire professional tax assistance, it is an established legal principle that taxpayers cannot rely on their accountant to timely pay their tax, as each taxpayer has a personal and non-delegable obligation to pay tax by the due date. (*U.S. v. Boyle* (1985) 469 U.S. 241, 247.) Ensuring that a payment is processed is the responsibility of the taxpayer, as the taxpayer controls the method and source of payment, not FTB. A prudent businessperson would have reviewed his or her bank account before the payment deadline to ensure that the payment was successfully transmitted. (See *Appeal of Scanlon*, 2018-OTA-075P.) Appellants did not exercise ordinary business care and prudence in failing to notice that such a large

amount, \$600,000, was not withdrawn from their account until 11 months later when FTB notified them of the balance due in the notice dated October 30, 2017.

Appellants assert that they requested a filing extension due to the death of a parent and the providing of 24-hour care to another parent. While illness or other personal difficulties that prevent taxpayers from filing a timely return or paying tax can be considered reasonable cause in some cases, taxpayers must present credible and competent evidence that the circumstances of the difficulties continuously prevented them from filing a timely return or paying tax. (*Appeal of Halaburka* (85-SBE-025) 1985 WL 15809.) While we are sympathetic to appellants' circumstances, they have not shown that their family's health issues prevented them from timely paying tax.

Appellants also assert they were involved in a partnership business with their parents, and that certain tax adjustments were necessary with regard to the partnership. Appellants contend that, as a result, they had to wait for the partnership return to be completed to file their personal return. Appellants argue that, if the partnership return was timely filed, they could have timely filed their personal return and would have, as a result, received notice from FTB sooner. However, the lack of notice from FTB of a failed payment does not negate appellants' duty of prudence and due care to verify that their payment was successful. Therefore, appellants have not shown reasonable cause for the failure to timely pay tax.

Issue 2: Whether the estimated tax penalty may be abated.

R&TC section 19136 incorporates by reference, with certain modifications, Internal Revenue Code (IRC) section 6654, which imposes an addition to tax or penalty if a taxpayer fails to make estimated tax payments (and/or withholdings) in a timely manner. The amount charged is similar to an interest charge and applies from the date the estimated tax payment was due until the date it is paid. Neither R&TC section 19136 nor IRC section 6654 allow for relief from the underpayment of estimated tax penalty upon a mere showing of "reasonable cause" or a "lack of willful neglect." (IRC, § 6654; R&TC, § 19136; *Appeal of McEwen* (85-SBE-091) 1985 WL 15898.) There are only two bases for waiver of the underpayment of estimated tax penalty, and those bases are set forth in IRC section 6654(e)(3), to which California conforms. IRC section 6654(e)(3)(A) provides for waiver of the penalty if the government determines that by reason of casualty, disaster, or other unusual circumstances the imposition of the penalty would be against equity and good conscience. IRC section 6654(e)(3)(B) provides for 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.


Appellants do not contest the imposition or computation of the estimated tax penalty. They only argue that reasonable cause exists for the failure to timely make the payment. As discussed above, appellants have not established reasonable cause. Furthermore, there is no general reasonable cause exception to the estimated tax penalty (*Appeal of Scanlon, supra*), and appellants have not alleged or shown that they qualify for the two waivers in IRC section 6654(e)(3). Therefore, appellants have not shown that the penalty should be abated.

HOLDINGS


1. The late payment penalty may not be abated.
2. The estimated tax penalty may not be abated.


DISPOSITION

FTB’s action is sustained.

DocuSigned by:

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 Josh Lambert
 Administrative Law Judge

We concur:

DocuSigned by:

 47F45ABE89E34D0
 Suzanne B. Brown
 Administrative Law Judge

DocuSigned by:

 CA2E033C0906484
 Douglas Bramhall
 Administrative Law Judge

Date Issued: 4/22/2020