

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 19085146
S. SPOTTEN AND)
L. SPOTTEN)
_____)

OPINION

Representing the Parties:

For Appellants: Tax Appeals Assistance Program¹

For Respondent: Meghan McEvelly, Tax Counsel III

A. ROSAS, Administrative Law Judge: Under Revenue and Taxation Code (R&TC) section 19324, appellants S. Spotten and L. Spotten appeal respondent Franchise Tax Board’s action in denying appellants’ claim for refund of \$2,262.19 (late-payment penalty of \$1,802.64, estimated tax penalty of \$242, and interest of \$217.55) for the 2018 tax year. Appellants waived their right to an oral hearing; therefore, we decide this matter based on the written record.

ISSUES

1. Did appellants establish that their failure to timely pay the total 2018 California income tax liability was due to reasonable cause and not willful neglect?
2. Did appellants establish that the estimated tax penalty should be waived?
3. Did appellants establish that they qualify for interest abatement?

FACTUAL FINDINGS

1. Based on their 2017 California adjusted gross income (AGI), appellants were required to pay a total of \$46,244 in tax withholdings and estimated tax payments for their 2018 tax year. For their 2018 tax year, appellants made estimated tax payments on April 15, 2018,

¹ Appellants filed their initial appeal letter. They were subsequently represented by the Tax Appeals Assistance Program (TAAP). TAAP law student Aramiss Navaii drafted appellants’ reply brief.

- June 18, 2018, and January 9, 2019. Appellants' withholdings totaled \$15,084 and their three estimated tax payments totaled \$23,303, for total payments of \$38,387.
2. Appellants timely filed their self-prepared 2018 California Resident Income Tax Return and reported total tax of \$69,172, minus total payments of \$38,387, for a tax due of \$30,785, plus a self-assessed underpayment of estimated tax penalty of \$741.
 3. Using respondent's Web Pay system, appellants requested and authorized two separate electronic funds transfer (EFTs) on April 15, 2019, the deadline to make timely tax payments owed for the 2018 tax year: an EFT of \$30,785 and an EFT of \$741. While the requested EFT of \$741 went through and processed successfully, the requested EFT of \$30,785 was unsuccessful because appellants omitted one digit when they input their bank account number.
 4. Appellants did not monitor their bank account to ensure that the requested EFT of \$30,785 was successful.
 5. On June 4, 2019, respondent issued a Notice of State Income Tax Due for the unpaid tax, plus \$2,044.64 in penalties (i.e., the late-payment and estimated tax penalties) and \$217.55 in interest, for a total due of \$32,306.19. Three days later, appellants paid the total sum of \$32,306.19.
 6. The following week, appellants filed a claim for refund for \$2,262.19.
 7. On June 24, 2019, respondent issued a Notice of Action, denying appellants' claim for refund. Appellants timely appealed.

DISCUSSION

Issue 1 – Did appellants establish that their failure to timely pay the total 2018 California income tax liability was due to reasonable cause and not willful neglect?

Respondent imposed a late-payment penalty of \$1,802.64. The law requires respondent to impose a late-payment penalty when a taxpayer fails to pay the amount due by the due date, unless the taxpayer establishes that the late payment was due to reasonable cause and not willful neglect. (R&TC, § 19132.) The taxpayer bears the burden of proving both conditions existed. (*Appeal of Friedman*, 2018-OTA-077P.) The taxpayer must show that the failure to timely pay the amount due occurred despite the exercise of ordinary business care and prudence. (*Ibid.*) The reason for not timely paying the tax due must be such that an ordinarily intelligent and

prudent businessperson would have acted similarly under the circumstances. (*Ibid.*) The failure to timely remit the balance due on a tax liability caused by an oversight does not, by itself, constitute reasonable cause. (*Ibid.*) Moreover, as to an oversight stemming from an EFT, we have held that “[w]e would expect reasonably prudent taxpayers exercising due care and diligence to monitor their bank account and quickly ascertain whether a scheduled electronic payment from their account to [Franchise Tax Board] was in fact paid.” (*Appeal of Scanlon*, 2018-OTA-075P, at p. 3.)

Appellants did not pay the amount due by the due date. The requested EFT of \$30,785 was unsuccessful because appellants input their bank account number incorrectly. Appellants concede that they “omitted one digit of the bank account number.” However, appellants argue that their good faith reliance on respondent’s Web Pay system affords them the reasonable cause necessary to avoid the late-payment penalty. We disagree. A taxpayer error attributable to an oversight, even an innocent oversight, generally will not constitute reasonable cause for penalty abatement purposes. (See *Appeal of Friedman, supra*; *Appeal of Risser* (84-SBE-044) 1984 WL 16123.)

Although appellants requested and authorized two EFTs on April 15, 2019, including the EFT at issue of \$30,785, appellants failed to subsequently monitor their bank account. Approximately two months went by when, on or about June 4, 2019, appellants received the Notice of State Income Tax Due and realized the requested EFT of \$30,785 had failed to go through successfully. Appellants chose to attempt an EFT payment on April 15, the payment deadline for the 2018 tax year. An ordinarily intelligent and prudent businessperson would know that when you wait to the last minute, there are significant risks. Thus, because of these risks, such ordinarily intelligent and prudent businesspersons would “monitor their bank account.” (*Scanlon, supra*, at p. 3.)

Thus, like the taxpayers in *Scanlon*, appellants must bear the consequences of their error. Based on the facts and evidence, including appellants’ inadvertent omission of one digit of the bank account number, and their failure to monitor their bank account, appellants did not establish that their failure to timely pay the total 2018 California income tax liability was due to reasonable cause and not willful neglect.

Issue 2 – Did appellants establish that the estimated tax penalty should be waived?

Respondent imposed an estimated tax penalty of \$242. Respondent imposes a penalty for the underpayment of estimated tax where the taxpayers' installment tax payments are less than the amounts due at the end of the installment periods. (R&TC, § 19136 [conforms, with some exceptions, to Internal Revenue Code (IRC), § 6654].) For California purposes, installment tax payments are due on April 15, June 15, and January 15 of the following tax year. (R&TC, § 19136.1; IRC, § 6654(c)(2).) This penalty is similar to an interest charge, which applies from the installment due date to the earlier of April 15 of the following tax year or the date on which the underpayment is paid. (IRC, § 6654(b)(2).)

For their 2018 tax year, appellants made estimated tax payments on April 15, 2018, June 18, 2018, and January 9, 2019. Based on their 2017 California AGI, appellants were required to pay a total of \$46,244 in tax withholdings and estimated tax payments for their 2018 tax year. Appellants' withholdings totaled \$15,084 and their three estimated tax payments totaled \$23,303, for total payments of \$38,387—approximately \$8,000 less than the required amount. Appellants do not dispute this.

Rather, appellants argue that the estimated tax penalty should be waived due to reasonable cause. But there is no general reasonable cause exception for the estimated tax penalty. (*Grosshandler v. Commissioner* (1980) 75 T.C. 1, 20-21; *Estate of Sanders v. Commissioner*, T.C. Memo. 2018-104.) Instead, there are limited exceptions that may waive the penalty: if by reason of casualty, disaster, or other unusual circumstances, imposing the penalty would be against equity and good conscience (IRC, § 6654(e)(3)(A)); or if the taxpayer retired after having attained age 62, or became disabled, during a specific relevant period, and such underpayment was due to reasonable cause and not to willful neglect (IRC, § 6654(e)(3)(B)). However, appellants do not contend, and the evidence does not indicate, that either of these limited exceptions apply.

Therefore, appellants have not demonstrated that they are entitled to a waiver of the estimated tax penalty for the 2018 tax year.

Issue 3 – Did appellants establish that they qualify for interest abatement?

Tax is due on the original due date of the return without regard to any filing extension. (R&TC, § 19001.) If a taxpayer does not pay the tax by the original due date of the tax return, or

if respondent assesses additional tax, the law provides for charging interest on the balance due. (R&TC, § 19101.) Imposing interest is mandatory, and respondent cannot abate interest except where authorized by law. (*Appeal of Balch*, 2018-OTA-159P, at p. 7.) Interest is not a penalty; it is compensation for the use of money. (*Ibid.*) To obtain interest waiver or abatement, a taxpayer must qualify under R&TC sections 19104, 19112, or 21012. Based on the evidence and appellant’s arguments, none of these statutory provisions apply. Therefore, appellants did not establish they qualify for waiver of interest.

HOLDINGS

1. Appellants did not establish that their failure to timely pay the total 2018 California income tax liability was due to reasonable cause and not willful neglect.
2. Appellants did not establish that the estimated tax penalty should be waived.
3. Appellants did not establish that they qualify for interest abatement.

DISPOSITION

We sustain respondent’s action in full.

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Alberto T. Rosas

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Alberto T. Rosas
Administrative Law Judge

We concur:

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E. L. Ewing

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Elliott Scott Ewing
Administrative Law Judge

DocuSigned by:

John O. Johnson

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John O. Johnson
Administrative Law Judge

Date Issued: 5/28/2020