



2. Respondent accepted the self-assessed total tax of \$825,123 and withholding payments of \$12,654 but determined that appellants' estimated tax payments for the 2017 tax year totaled \$543,177—not \$1,057,097, as reported.
3. Several factors contributed to the underpayment:
  - Respondent had required appellants to make estimated tax payments through electronic payment (e-pay) methods.
  - The deceased passed away in October 2017; she had been the person who submitted estimated tax payments using respondent's Web Pay system.
  - Beginning on January 1, 2017, B. Brown's arthritis of the hands made it difficult and prohibitive for B. Brown to use a computer, keyboard and mouse.
  - On December 28, 2017, and April 18, 2018, using respondent's Web Pay system, B. Brown attempted to submit appellants' third and fourth estimated tax payments in the sums of \$203,073 and \$304,847, respectively. When attempting to submit these payments, B. Brown input the incorrect bank routing or account information.
4. On December 18, 2018, after determining that appellants had underpaid their 2017 tax liability by \$269,292, respondent issued a Notice of Tax Return Change. The notice imposed a late-payment penalty in the amount of \$25,582.74, an estimated tax penalty in the amount of \$2,801, plus interest on the tax and penalties, for a total balance due of \$305,158.97.
5. On January 1, 2019, appellants made a payment in excess of \$500,000. The payment was split between two tax years: \$305,158.97 was applied to the balance due for the 2017 tax year; and the remainder was applied to the 2018 tax year.
6. Appellants requested abatement of the late payment of tax and estimated tax penalties, plus the interest charged for the 2017 tax year. In January 2019, respondent denied the request. Then, in early 2019, appellants made two payments totaling over \$8,000, which satisfied the remaining interest charges due for the 2017 tax year and the mandatory e-pay penalties. The two payments resulted in a minor overpayment of less than \$10, which respondent refunded to B. Brown.
7. In June 2019, appellants submitted to respondent a Mandatory e-Pay Election to Discontinue or Waiver Request (Form FTB 4107), requesting a waiver of the mandatory e-pay penalties, and requesting a discontinuance of the requirement that B. Brown make

electronic payments. Page 3 of form FTB 4107 consisted of a Physician Affidavit of Permanent Physical or Mental Impairment, signed by a medical doctor. The physician affidavit indicated that, beginning on January 1, 2017, B. Brown's arthritis of the hands made it difficult and prohibitive for B. Brown to use a computer, keyboard and mouse. Respondent abated the mandatory e-pay penalties and discontinued the mandatory e-pay requirement; the abatement resulted in an overpayment of approximately \$7,600, plus interest of approximately \$200, which respondent refunded in August 2019.

8. In addition, in July 2019, appellants submitted to respondent a Reasonable Cause - Individual and Fiduciary Claim for Refund, requesting a refund of the late-payment penalty, estimated tax penalty, plus interest and fees. Along with other supporting documents, the claim for refund included a copy of form FTB 4107 and the Physician Affidavit of Permanent Physical or Mental Impairment.
9. On September 9, 2019, respondent issued a General Correspondence to appellants, denying appellants' claim for refund. This timely appeal followed.

#### DISCUSSION

##### Issue 1 – Did appellants establish that their failure to timely pay the total 2017 California income tax liability was due to reasonable cause and not willful neglect?

Respondent imposed a late-payment penalty of \$25,582.74. 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 (1) due to reasonable cause and (2) 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 electronic funds transfer (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 underpaid their 2017 tax liability by \$269,292. On December 28, 2017, and April 18, 2018, B. Brown attempted to submit appellants’ third and fourth estimated tax payments in the sums of \$203,073 and \$304,847, respectively. When attempting to submit these two estimated tax payments electronically using respondent’s Web Pay system, B. Brown input the incorrect bank routing or account information. We understand appellants’ position: the deceased, who passed away in October 2017, had been the person who submitted estimated tax payments using respondent’s Web Pay system; and beginning in January 2017, B. Brown’s arthritis of the hands made it difficult and prohibitive for B. Brown to use a computer, keyboard and mouse. However, 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 an EFT on December 28, 2017, in the sum of \$203,073 and another EFT on April 18, 2018, in the sum of \$304,847, B. Brown failed to subsequently monitor his bank accounts for the purpose of determining that these EFTs were successful. We understand the facts leading up to B. Brown having input the incorrect bank routing or account information. But our focus is not limited to these facts alone. We also focus on B. Brown’s failure to monitor his bank accounts for eight months to one year. For example, approximately one year had passed from the attempted EFT in December 2017, and eight months had passed from the attempted EFT in April 2018 when, on or about December 18, 2018, B. Brown received the Notice of Tax Return Change and realized that the requested EFTs had failed to process successfully. An ordinarily intelligent and prudent businesspersons would “monitor their bank account.” (*Appeal of Scanlon, supra*, at p. 3.) The facts suggest that certain individuals may have been able to assist B. Brown in carrying out this responsibility to monitor his bank accounts; for example, a CPA prepared appellants’ joint California nonresident tax return for the 2017 tax year, and, based on the evidence in the record, it would seem that B. Brown had a good relationship with his financial institution.

Thus, like the taxpayers in *Scanlon*, appellants must bear the consequences of their error. Based on the facts and evidence, including B. Brown having inadvertently input the incorrect bank routing or account information, and, perhaps more importantly, B. Brown’s failure to

monitor his bank accounts, appellants did not establish that their failure to timely pay the total 2017 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 \$2,801. 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].) 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).)

Appellants do not contest the imposition or computation of the estimated tax penalty. 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. (*Estate of Sanders v. Commissioner*, T.C. Memo. 2018-104; *Appeal of Johnson*, 2018-OTA-119P.) 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)). Based on the evidentiary record, we focus solely on the latter exception.

Appellants' claim for refund included a copy of form FTB 4107 and the Physician Affidavit of Permanent Physical or Mental Impairment. Although this form and the physician affidavit led to respondent's abatement of the mandatory e-pay penalties, this same evidence is not sufficient to prove, by a preponderance of the evidence, that the underpayment of estimated tax was due to reasonable cause and not to willful neglect, under IRC section 6654(e)(3)(B).

In *Jones v. Commissioner*, T.C. Memo. 2006-176, a taxpayer was diagnosed with mental distress but did not show that the failure to pay estimated tax was due to reasonable cause. In *Adams v. Commissioner*, T.C. Memo. 2013-7, the tax court found that activities such as managing rental properties and operating a business strongly suggest that a taxpayer was not disabled. In *Thomas v. Commissioner*, T.C. Memo. 2005-258, although a taxpayer suffered from bilateral tendinitis, carpal tunnel syndrome, and depression during the relevant time period, the taxpayer was also employed and ran a business, leading the tax court to find that the taxpayer

was not disabled for purposes of IRC section 6654. Appellants' joint California nonresident tax return for the 2017 tax year shows, when using California law, that appellants reported "Wages, salaries, tips, etc.," capital gains, and "Rental real estate, royalties, partnerships, S corporations, trusts, etc." There is no evidence about the specifics of this reported income; for example, there is no evidence that the "Wages, salaries, tips, etc." were earned by B. Brown. Moreover, there is nothing in the evidentiary record indicating that B. Brown, based on a disability, was unable to monitor his bank accounts, or that he was unable to contact respondent, his CPA, or his financial institution to follow up on his estimated tax payments and the attempted EFTs.

Thus, notwithstanding the evidence, including form FTB 4107 and the physician affidavit, appellants did not prove that it is more likely than not that B. Brown was disabled for purposes of IRC section 6654(e)(3)(B). Furthermore, although B. Brown may have been diagnosed with arthritis of the hands, appellants did not show that the failure to pay estimated tax was due to reasonable cause. Therefore, appellants have not demonstrated that they are entitled to a waiver of the estimated tax penalty for the 2017 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.*)

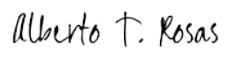
Respondent concedes on appeal that appellants are entitled to a refund of \$458.88, which is the amount of interest that accrued after respondent issued the Notice of Tax Return Change, because B. Brown paid the balance due within 15 days after the issuance of the notice. (R&TC, § 19101(c)(3).) To obtain waiver or abatement of any additional interest, appellants must qualify under R&TC sections 19104, 19112, or 21012. Based on the evidence and appellants' arguments, none of these statutory provisions apply. Therefore, appellants did not establish that they qualify for any waiver or abatement of interest beyond the \$458.88.

HOLDINGS

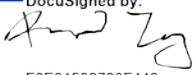
1. Appellants did not establish that their failure to timely pay the total 2017 California income tax liability was due to reasonable cause and not willful neglect.
2. Appellants did not establish that the estimated tax penalty should be waived.
3. Appellants did not establish that they qualify for interest abatement in an amount greater than the sum conceded by respondent.

DISPOSITION

As conceded by respondent on appeal, its action denying appellants’ claim for refund is modified to allow a refund of \$458.88 in interest. In all other respects, we sustain respondent’s action.

DocuSigned by:  
  
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 Alberto T. Rosas  
 Administrative Law Judge

We concur:

DocuSigned by:  
  
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 Richard Tay  
 Administrative Law Judge

DocuSigned by:  
  
 DC88A60D8C3F442  
 Keith T. Long  
 Administrative Law Judge

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