

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 20025867
P. KUMAR AND)
K. SIVASANKARAN)
_____)

OPINION

Representing the Parties:

For Appellants: P. Kumar

For Respondent: Christopher T. Tuttle, Tax Counsel III

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, P. Kumar and K. Sivasankaran (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claims for refund for the 2014 through 2017 taxable years.¹

Appellants waived the right to an oral hearing; therefore, we decide the matter based on the written record.

ISSUES

1. Are appellants entitled to a refund of late-payment penalties for 2014, 2015, and 2016?
2. Are appellants entitled to a refund of a late-filing penalty for taxable year 2017?
3. Are appellants entitled to waiver of penalties for underpayment of estimated tax for 2014, 2015, 2016, and 2017?
4. Are appellants entitled to interest abatement for 2014, 2015, 2016, or 2017?

¹ Appellants additionally filed claims for refund for the 2013 and 2018 taxable years. For 2013, appellants filed a joint return, and no penalties or interest were applied. For 2018, appellants filed a joint return and paid on time; FTB placed a hold on the refund in the amount of \$1,739, pending the outcome of this appeal.

FACTUAL FINDINGS

1. Appellants timely filed California joint income tax returns for 2014, 2015, and 2016, but did not pay in full by the payment due dates for each year.
2. Appellants untimely filed a California joint income tax return for 2017 and submitted a late payment with the return.
3. Appellants self-assessed penalties for underpayment of estimated tax for 2015, 2016, and 2017.
4. After FTB assessed penalties and interest and began collection activities, appellants contacted FTB to resolve the outstanding balances for taxable years 2015 and 2016.
5. Appellant-wife and her spouse were still married as of 2017.
6. Subsequently, appellants paid all balances and filed claims for refund of penalties and abatement of interest.
7. FTB denied appellants' claims for refund for the years at issue.
8. Appellants filed this timely appeal.

DISCUSSION

Issue 1: Are appellants entitled to a refund of late-payment penalties for 2014, 2015, and 2016?

R&TC section 19132 provides that a late-payment penalty is imposed when a taxpayer fails to pay the amount shown as due on the return on or before the due date of the return. The late-payment penalty applies from the original due date for filing, even when a taxpayer timely files the return by an extended due date. (R&TC, § 19132(a)(1)(A).) The late-payment penalty may be abated if the taxpayer establishes that the failure to make a timely tax payment was due to reasonable cause and was not due to willful neglect. (R&TC, § 19132(a)(1).) To establish reasonable cause for the late payment of tax, the taxpayer must show that the failure to make a timely payment of the proper amount occurred despite the exercise of ordinary business care and prudence. (*Appeal of Friedman*, 2018-OTA-077P.) The taxpayer bears the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Ibid.*) Competent and credible evidence of an illness may establish reasonable cause where the taxpayer shows that the illness prevented them from complying with the law. (*Appeal of Triple Crown Baseball LLC*, 2019-OTA-025P.) The evidence must also show that the taxpayer was continuously prevented from filing or paying on time. (*Appeal of Halaburka* (85-

SBE-025) 1985 WL 15809.) However, when a taxpayer chooses to sacrifice the timeliness of one aspect of the taxpayer's affairs to pursue other aspects, the taxpayer must bear the consequences of that choice. (*Appeal of Triple Crown Baseball LLC, supra.*)

Appellants assert that they have had marital difficulties, and that each of them suffered from health issues. Appellants assert that a combination of these difficulties has affected the family for all taxable years at issue. In support, appellants submitted records from medical professionals showing that appellant-wife received treatment in May 2019. Appellants did not submit any documentation reflecting any disability of appellant-husband, stating that they wanted to protect his privacy. Appellants were married during the years at issues, and they filed joint returns from 2013 through 2018.

Although appellants have established that in May 2019, appellant-wife was under treatment for some health issues, the record does not reflect that during the taxable years at issue both spouses were continuously unable to timely pay a portion of the joint tax liabilities. On the contrary, the record reflects that appellants were able to timely file their 2014, 2015, and 2016 returns and to partially pay the tax liabilities. For 2017, appellants were able to timely pay their tax liability but did not file on time. Moreover, for each taxable year at issue, appellant and her spouse were both employed and earning taxable income sufficient to conclude they were financially capable of paying their taxes.² No evidence supports that both appellants were continuously unable to meet their tax filing and payment obligations. Thus, appellants have failed to establish reasonable cause to abate the late-payment penalties.

Issue 2: Are appellants entitled to a refund of a late-filing penalty for taxable year 2017?

R&TC section 19131 requires FTB to impose a late-filing penalty when a taxpayer fails to file on or before the due date of the return or the due date as extended by FTB unless it is shown that the failure to meet the deadline is due to reasonable cause and not due to willful neglect. FTB allows an automatic six-month extension to file a California tax return if the return is filed within six months of the original due date. (R&TC, § 18567(a).) The late-filing penalty is computed at 5 percent of the tax due, after allowing for timely payments, for every month elapsing from the due date of the return (without regard to any extension) to the filing date, up to a maximum of 25 percent. (R&TC, § 19131.)

² Appellant-wife lost her job some time in 2017; however, appellants' federal adjusted gross income remained above \$200,000 for that taxable year.

Appellants filed their 2017 California tax return after the extended due date of October 15, 2018. The penalty's calculation period begins on April 15, 2018, which is more than six months before appellants filed the return. The maximum of 25 percent of the tax was properly calculated. Appellants make the same assertions with respect to all penalties; namely, that they had marital issues and health problems. However, appellants have not shown reasonable cause to abate the late-filing penalty.

Issue 3: Are appellants entitled to waiver of penalties for underpayment of estimated tax for 2014, 2015, 2016, and 2017?

California generally conforms to federal income tax law when imposing a penalty for the failure to make sufficient estimated tax payments. (R&TC, § 19136(a) [incorporating by reference Internal Revenue Code (IRC), § 6654].) There is nothing in the law that allows relief from the penalty for underpayment of estimated tax. (*Appeal of Johnson*, 2018-OTA-119P.) However, as set forth in IRC section 6654(e)(3)(A), the penalty shall not be imposed where the underpayment was due to casualty, disaster, or other unusual circumstances such that imposition of the penalty would be against equity and good conscience.

Appellants have not alleged that any of the exceptions under IRC section 6654 exist to allow for waiver of the penalties. Moreover, appellants were aware that they failed to make required estimated payments and self-assessed penalties for 2015, 2016, and 2017. Appellants have not shown that they are entitled to waiver of the penalties.

Issue 4: Are appellants entitled to interest abatement for 2014, 2015, 2016, or 2017?

Interest must be assessed from the date a tax payment is due through the date that it is paid. (R&TC, § 19101.) Imposition of interest is mandatory; it is not a penalty, but it is compensation for a taxpayer's use of money after it should have been paid to the state. (*Appeal of Moy*, 2019-OTA-057P.) There is no reasonable cause exception to the imposition of interest. (*Ibid.*) To obtain relief from interest, a taxpayer must qualify under the waiver provisions of R&TC sections 19104, 19112, or 21012. (*Ibid.*) The relief of interest under R&TC section 21012 is not relevant here, because FTB did not provide appellants with any written advice. Under R&TC section 19104, 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, and the record does not reflect, any such

errors or delays. FTB may grant a waiver of interest when it “determines that an individual or fiduciary demonstrates inability to pay that interest solely because of extreme financial hardship caused by significant disability or other catastrophic circumstance.” (R&TC, § 19112.) Only FTB may determine when a waiver of interest is warranted upon a showing of extreme financial hardship.


Appellants have not established a basis to abate interest.

HOLDINGS


1. Appellants are not entitled to a refund of late-payment penalties for taxable years 2014, 2015, and 2016.
2. Appellants are not entitled to a refund of the late-filing penalty for taxable year 2017.
3. Appellants are not entitled to waiver of penalties for underpayment of estimated tax for taxable years 2014, 2015, 2016, and 2017.
4. Appellants are not entitled to interest abatement for taxable years 2014, 2015, 2016, and 2017.


DISPOSITION

FTB’s actions in denying appellants’ claims for refund are sustained.

DocuSigned by:

 0CC6C6ACCC8A44D...
 Teresa A. Stanley
 Administrative Law Judge

We concur:

DocuSigned by:

 67F043D83EF547C...
 Sheriene Anne Ridenour
 Administrative Law Judge

DocuSigned by:

 2D8DE82EB65E4A6...
 Elliott Scott Ewing
 Administrative Law Judge

Date Issued: 12/29/2020