

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 20025845
)
M. BENJY AND)
S. BENJY)
 _____)

OPINION

Representing the Parties:

For Appellants: M. Benjy and S. Benjy

For Respondent: Joel Smith, Tax Counsel III

A. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. and S. Benjy (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants' claim for refund of \$1,572.05 for the 2018 tax year.¹

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

ISSUES²

1. Whether appellants have established reasonable cause for the late payment of tax for the 2018 tax year.
2. Whether appellants have established that the estimated tax penalty should be waived.

FACTUAL FINDINGS

1. On September 17, 2019, appellants filed their 2018 California income tax return, reporting a tax due of \$8,416 and self-assessed an estimated tax penalty of \$115, for a total amount due of \$8,531. Appellants remitted payment for the total amount due with their return.

¹ This amount consists of the late payment penalty of \$631.20, an underpayment of estimated tax penalty (estimated tax penalty) of \$746.20, and interest of \$194.65.

² Because appellants have not asserted any arguments for abating interest, this issue will not be addressed separately here and will only be abated if the underlying liabilities upon which interest accrued are abated.

2. Because appellants paid their tax after April 15, 2018, FTB imposed the late payment penalty. Appellants thereafter remitted payment.
3. Appellants filed a claim for refund for the late payment penalty, the estimated tax penalty, and interest. FTB denied the claim.
4. This timely appeal followed.

DISCUSSION

Issue 1: Whether appellants have established reasonable cause for the late payment of tax for the 2018 tax year.

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 may be abated if taxpayers establish 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, taxpayers must show that their 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.) While illness or other personal difficulties may constitute reasonable cause, taxpayers must present competent and credible proof that they were continuously prevented from timely acting. (See *Appeal of Halaburka* (85-SBE-025) 1985 WL 15809.)³

Appellants state appellant-wife has lupus and that in January 2019, she had fallen down the stairs and shattered her hip, causing her to be hospitalized for seven days and required outpatient treatment following her stay. Appellants argue that due to the difficulties of having one spouse injured and the other providing for her care, they did not notice that they had failed to timely pay their tax. Appellants emphasize that they have 40 years of overpaying tax, have always applied the overpayment to the following tax year, and consider themselves good tax-paying citizens.

We are sympathetic to appellants' situation. However, the law requires appellants to demonstrate not only personal hardship, but also a continuous inability to timely pay taxes

³ Because the issue of whether taxpayers have established reasonable cause for failing to timely pay tax asks the same questions and weighs the same evidence as the inquiry of whether there is reasonable cause for failing to timely file a return, decisions analyzing the latter issue are persuasive authority for determining whether reasonable cause existed for the failure to timely pay the tax. (*Appeal of Triple Crown Baseball LLC*, 2019-OTA-025P.)

despite the exercise of ordinary business care and prudence. We find no evidence of that here. California law also does not provide a basis to abate the late payment penalty based on taxpayers' history of timely tax payments. Accordingly, appellants have not established reasonable cause to abate the late payment penalty.

Issue 2: Whether appellants have established that the estimated tax penalty should be waived.

Except as otherwise provided, R&TC section 19136 conforms to the Internal Revenue Code (IRC) section 6654 and 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. 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).) There is no general reasonable cause exception for the estimated tax penalty. (*Appeal of Johnson*, 2018-OTA-119P.) Instead, IRC section 6654(e)(3)(A) provides a limited exception to waive the penalty if, by reason of casualty, disaster, or other unusual circumstances, imposing the penalty would be against equity and good conscience.


Appellants only argue that the penalty should be refunded based on reasonable cause, and we do not find that the evidence establishes waiving the penalty due to casualty, disaster or other unusual circumstances. Accordingly, the estimated tax penalty cannot be waived.

HOLDINGS

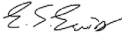
1. Appellants have not established reasonable cause for the late payment of tax for the 2018 tax year.
2. Appellants have not established that the estimated tax penalty should be waived.


DISPOSITION

FTB’s action is sustained.

DocuSigned by:

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 Andrea L.H. Long
 Administrative Law Judge

We concur:

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 Elliott Scott Ewing
 Administrative Law Judge

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 Tommy Leung
 Administrative Law Judge

Date Issued: 1/25/2021