

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 20036012
P. BALDONADO AND)
G. BALDONADO)
_____)

OPINION

Representing the Parties:

For Appellants: Manolito Legaspi, Representative

For Respondent: Christopher T. Tuttle, Tax Counsel

For Office of Tax Appeals: Michael Park, Graduate Student Assistant

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, P. Baldonado and G. Baldonado (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$8,374.05 for the 2018 taxable year.

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

ISSUES

1. Whether appellants have established reasonable cause for the late payment of their taxes.
2. Whether appellants are entitled to interest abatement.

FACTUAL FINDINGS

1. Appellants filed a timely joint 2018 California income tax return, but did not pay off their outstanding account balance for the 2018 taxable year until December 27, 2019, upon borrowing money for that purpose and after receiving several notices from FTB; the final amount due included a late payment penalty and interest.
2. Asserting reasonable cause, appellants requested a refund of the late payment penalty and interest.

3. FTB denied the refund claim.

DISCUSSION

Issue 1: Whether appellants have established reasonable cause for the late payment of their taxes.

A late payment penalty is imposed when a taxpayer fails to pay the tax shown on a return by the date prescribed for the payment of the tax. The late payment penalty may be abated if the taxpayer shows 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 for the late payment of tax, a taxpayer must show that the failure to make a timely payment of the proper amount of tax occurred despite the exercise of ordinary business care and prudence, or that such cause existed as would prompt an “ordinary intelligent and prudent” businessperson to have so acted under similar circumstances. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P, quoting from *Appeal of Tons* (79-SBE-027) 1979 WL 4068.) Here, FTB properly imposed the late payment penalty because the payment due date was April 15, 2019, and appellants did not satisfy their 2018 tax liability until December 27, 2019, nine months after the due date.

Appellants contend that when they called FTB on December 27, 2019, an FTB representative informed them that if they paid their balance due, FTB would waive the late payment penalty and interest. Appellants state that based on this advice, they borrowed money to pay the outstanding taxes, penalty, and interest, in order to receive the penalty and interest waiver. Appellants argue that FTB should be required to follow through with its advice to appellants.

Appellants appear to refer to the doctrine of equitable estoppel in attempting to establish reasonable cause. “Equitable estoppel is a judicial doctrine that ‘precludes a party from denying his [or her] own acts or representations which induced another to act to his [or her] detriment.’” (*Hofstetter v. Commissioner* (1992) 98 T.C. 695, 700, citing *Graff v. Commissioner* (1980) 74 T.C. 743, 761.) However, equitable estoppel may be applied against a government agency only under those circumstances when its application is necessary to prevent grave injustice. (*Appeal of Smith* (91-SBE-005) 1991 WL 280345.) The four elements of equitable estoppel are: (1) the government agency must be apprised of the facts; (2) the government agency must intend that the inaccurate representation be acted upon; (3) the relying party must be ignorant of the facts;

and (4) the relying party must have detrimentally relied upon the representation of the government agency. (*Appeal of Western Colorprint* (78-SBE-071) 1978 WL 3544; see also *Appeal of Campbell* (79-SBE-035) 1979 WL 4076.) The party asserting equitable estoppel (appellants here) has the burden of proving that all of the elements are present. (*Appeal of Western Colorprint, supra.*) Where one of these elements is missing, there can be no estoppel. (*Hersch v. Citizens Savings & Loan Assn.* (1983) 146 Cal.App.3d 1002, 1010.) Additionally, detrimental reliance is only present when FTB's action causes the taxpayer to take action that leads to an increased tax liability. (*Appeal of Lopert* (82-SBE-011) 1982 WL 11689.) Moreover, FTB is not bound by informal opinions from one of its employees on questions of taxability. (*Appeal of Western Colorprint, supra.*)

Here, the late payment penalty and interest had already accrued on appellants' 2018 tax account at the time they borrowed money to pay off their outstanding balance. Thus, there was no detrimental reliance by appellants on FTB's oral communication with them and no causal relationship between such communication and appellants' failure to pay their 2018 taxes on time. Therefore, because one of the four elements (i.e., detrimental reliance) is missing, we find that equitable estoppel is inapplicable.

During appellants' protest, appellants argued that they received bad advice from their tax preparer, who told them that the period to roll over a retirement account had expired when it had not. Appellants alleged that due to the errant advice, they were facing a large tax bill. Reliance on a tax professional on a substantive question of law may be considered reasonable cause if certain elements are met. (*U.S. v. Boyle* (1985) 469 U.S. 241, 251 (*Boyle*)). However, the taxpayers' reliance on a professional to prepare their return does not abrogate their legal obligation to timely pay their tax liability because taxpayers have a personal and nondelegable duty to make required tax payments. (*Id.* at pp. 247 & 251.) The nondelegable duty principle applicable to the late filing penalty in *Boyle* also applies in the late payment penalty context. (*Appeal of Berolzheimer* (86-SBE-172) 1986 WL 22860.) The primary duty to timely pay the tax is with the taxpayer, and this duty cannot be delegated or excused by the failure of a third-party professional, including an accountant or an attorney. (*Ibid.*) It requires no special training or effort to ascertain a deadline and make sure that it is met. (*Boyle, supra*, at p. 252.)

Appellants thus had a personal and non-delegable obligation to pay their requisite tax by the due date but did not do so. Regardless of the alleged bad advice appellants received from

their tax preparer, appellants have not provided argument or evidence as to how the advice caused appellants' untimely payment of the tax that was self-assessed on their timely filed 2018 tax return. As such, reasonable cause for the failure to timely pay tax based on reliance on a tax preparer has not been established.

Finally, appellants contend that appellant-husband is ill and thus they need the refund to pay off his medical bills. However, absent statutory authority, there is nothing in the law that would allow us to abate the late payment penalty for this reason. Illness may establish reasonable cause only if the taxpayer presents credible and competent proof that the circumstances of the illness prevented the taxpayer from complying with the law. (*Appeal of Seaman* (75-SBE-080) 1975 WL 3564.) Moreover, inability to pay the tax due to financial hardship may also establish reasonable cause to abate the late payment penalty. (*Appeal of Triple Crown Baseball LLC*, 2019-OTA-025P.) Here, appellants have not presented sufficient evidence that illness prevented them from paying their taxes timely.

In summary, appellants have not provided sufficient evidence to show that their late payment of tax was due to circumstances that constituted reasonable cause for abating the late payment penalty and not willful neglect. As the record shows that appellants' failure to pay was not due to reasonable cause, there is no basis to abate the late payment penalty.

Issue 2: Whether appellants are entitled to interest abatement.

The imposition of interest on a tax deficiency is mandatory. (R&TC, § 19101(a).) Interest is not a penalty but is compensation for a taxpayer's use of money that should have been paid to the state. (*Appeal of Yamachi* (77-SBE-095) 1977 WL 3905.) There is no reasonable cause exception to the imposition of interest. (*Appeal of Moy*, 2019-OTA-057P.)


To obtain interest abatement, a taxpayer must qualify under R&TC sections 21012, 19112, or 19104. However, appellants have not provided any arguments that show that interest abatement is appropriate under any of the applicable statutes.

HOLDINGS

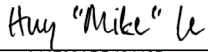
1. Appellants have failed to establish reasonable cause for the late payment of their taxes.
2. Appellants are not entitled to interest abatement.

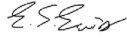
DISPOSITION

FTB’s action is sustained in full.

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 Tommy Leung
 Administrative Law Judge

We concur:

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 Administrative Law Judge

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 Elliott Scott Ewing
 Administrative Law Judge

Date Issued: 2/24/2021