

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 20076400
 F. SASSO AND)
 E. SASSO)
 _____)

OPINION

Representing the Parties:

For Appellants: Mark Patten, CPA

For Respondent: Jean M. Cramer, Tax Counsel IV

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, F. Sasso and E. Sasso (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants' claim for refund of \$48,165.48¹ for the 2018 taxable year.

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

ISSUES

1. Have appellants established reasonable cause to abate the late-payment penalty?
2. Have appellants established a basis to abate the estimated tax penalty?

FACTUAL FINDINGS

1. During 2018, appellants were partners in a limited partnership (White Eagle) located in California, which sold a controlling interest in a California property (Cienega), generating capital gains. Prior to April 15, 2019, White Eagle issued to appellants an estimate of their share of 2018 income and capital gains. In August 2019, White Eagle

¹ The total includes a late-payment penalty and an underpayment of estimated tax penalty (estimated tax penalty). Appellants paid interest on the late payment as well as on the late-payment penalty. Because we find, below, that appellants have not established a basis to abate the penalties, we do not address interest further.

- issued to appellants a Schedule K-1 (Partner's Share of Income, Deductions, Credits, etc.) reporting income in an amount that varied only slightly from the estimate.²
2. Appellants filed a joint 2018 California Nonresident or Part-Year Resident income tax return (Form 540 NR) on October 15, 2019. The return reported tax due of \$440,181 plus an estimated tax penalty of \$12,951. Appellants paid the balance that day.
 3. FTB assessed a late-payment penalty and issued a State Income Tax Balance Due Notice.
 4. Appellants paid the outstanding balance and requested abatement of the penalties based on reasonable cause, which FTB denied. This timely appeal followed.

DISCUSSION

Issue 1: Have appellants established reasonable cause to abate the late-payment penalty?

R&TC section 19132 imposes a late-payment penalty when a taxpayer fails to pay the amount shown as due on the return by the date prescribed for the payment of the tax. Generally, the date prescribed for the payment of the tax is the due date of the return (without regard to extensions of time for filing). (R&TC, § 19001.) Here, FTB properly proposed the late-payment penalty because the payment due date was April 15, 2019, and appellants did not pay the full tax liability until October 15, 2019, six months after the due date. 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.³ (R&TC, § 19132(a)(1).) To establish reasonable cause, appellants bear the burden to show that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Appeal of Triple Crown Baseball*, 2019-OTA-025P.) Lack of documentation or difficulty in calculating a tax liability does not, by itself, constitute reasonable cause for a late payment of tax. (*Appeal of Moren*, 2019-OTA-176P.)

Appellants assert that they were reasonable in not paying on time because the estimate of their share of White Eagle income and capital gains did not state that it was sourced to California. They further state that in prior years the partnership only generated small amounts of California-sourced income, so they were unaware that they needed to increase their California

² Neither the estimate nor the Schedule K-1 reflects an issuance date; however, we accept appellants' assertions with respect to the dates they received the documents.

³ FTB has not asserted willful neglect, and we see no evidence of it. Therefore, we only examine whether appellants have shown reasonable cause to abate the penalty.

estimated payments. Appellants believed that White Eagle’s estimate reflected only their federal income and capital gain. In support, they provided a copy of a check issued to the United States Treasury. The check accompanied appellants’ request for an automatic extension to file their 2018 federal tax return.

Appellants’ assumption with respect to whether their partnership share of capital gains from the sale of a controlling interest in the Cienega property was California source income is not reasonable. White Eagle is based in California, and the Cienega property is also located in California. While the White Eagle estimate does not say specifically that the property generated California-sourced income and capital gains, it likewise did not state that it was sourced to any other state. Moreover, the estimate did not specify that it only applied to federal taxation. The large amount of capital gains included on the estimate were clearly attributed to the Cienega property. Appellants do not say what steps they took to ascertain whether any or all of the Cienega-related capital gains would be sourced to California. The California address of the Cienega property should have put appellants on notice that they needed to explore the extent of their California-sourced income. Appellants were minority partners but could have requested such information from a general partner. We believe a reasonably prudent businessperson would have done so or would have consulted their tax advisor, specifically with respect to the extent of their California-source income and the California tax consequences from the sale. Appellants have not produced evidence they did so. Accordingly, we do not find that appellants have shown reasonable cause to abate the late-filing penalty.

Appellants further assert that they have a history of paying their federal and state tax obligations on time. We note that the IRS administers a program called “First Time Abate” under which it abates first-time timeliness penalties if a taxpayer has timely filed returns and paid taxes due for the preceding three years. However, FTB has no such program, and California law allows abatement only on a showing that the failure to pay on time was due to reasonable cause.⁴

⁴ The California Legislature has considered and declined to adopt bills that would change California law to allow a first-time abatement for taxpayers with a history of filing and payment compliance. (See Assem. Bill No. 1777 (2013-2014 Reg. Sess.).)

Issue 2: Have appellants established a basis to abate the estimated tax penalty?

Except as otherwise provided, R&TC section 19136 conforms to Internal Revenue Code (IRC) section 6654, which imposes an estimated tax penalty when a taxpayer's installment payments are less than the amounts due at the end of the installment periods. There is no provision in the R&TC (or the IRC incorporated by the R&TC) that allows the penalty to be abated based solely on a finding of reasonable cause. As a result, there is no general reasonable cause exception to the imposition of the estimated tax penalty. (*Appeal of Saltzman*, 2019-OTA-070P.) The estimated tax penalty is mandatory unless the taxpayer establishes that a statutory exception applies. (*Ibid.*) Although IRC sections 6654(e)(3)(A) and (B) provide for waiver of the penalty under certain limited situations, appellants have not presented any arguments suggesting that any of those situations apply to them. Here, appellants assert that there was reasonable cause for their underpayment of estimated tax. However, as there is no general reasonable cause exception to the estimated tax, we find that appellants have failed to establish that the estimated tax penalty should be abated.

HOLDINGS

1. Appellants have not established reasonable cause to abate the late-payment penalty.
2. Appellants have not established a basis to abate the estimated tax penalty.

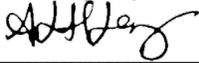
DISPOSITION

FTB’s denial of appellants’ claim for refund is sustained.

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 Teresa A. Stanley
 Administrative Law Judge

We concur:

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 Andrea L.H. Long
 Administrative Law Judge

DocuSigned by:

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 Sheriene Anne Ridenour
 Administrative Law Judge

Date Issued: 2/3/2021