



### FACTUAL FINDINGS

1. On April 15, 2019, appellants, through their accountant, attempted to make an extension payment for the 2018 tax year, but erroneously entered \$130,002 instead of \$13,002. The payment was dishonored due to insufficient funds.
2. On May 22, 2019, appellants filed their California income tax return.
3. Subsequently, respondent sent appellants a Notice of Tax Return Change, dated June 11, 2019, which informed appellants that respondent had revised the estimated tax payments shown on appellants' return from \$130,002 to \$0 and also imposed a late payment of tax penalty totaling \$693.55 and an estimated tax penalty of \$295.
4. Appellants paid the remaining balance due via multiple payments made between June 19, 2019, and May 5, 2020.
5. On September 15, 2019, appellants filed a claim for refund, which respondent denied. This timely appeal followed.

### DISCUSSION

#### Issue 1: Whether appellants have shown reasonable cause to abate the late payment of tax penalty.

R&TC section 19001 generally provides that the personal income tax imposed “shall be paid at the time and place fixed for filing the return (determined without regard to any extension of time for filing the return).” 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 will be abated if the taxpayers show 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).) The taxpayers bear the burden of proving that both conditions existed. (*Appeal of Friedman*, 2018-OTA-077P.)

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 of tax occurred despite the exercise of ordinary business care and prudence. (*Appeal of Scanlon*, 2018-OTA-075P.) The taxpayers bear the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Appeal of Friedman*, *supra*.) A failure to pay will be considered due to reasonable cause if the taxpayers make a satisfactory showing that they

exercised ordinary business care and prudence in providing for the payment of their tax liability and were nevertheless either unable to pay the tax or would suffer undue hardship if they paid on the due date. (Treas. Reg. § 301.6651-1(c)(1); *Nasir v. Commissioner*, T.C. Memo. 2011-283.)<sup>3</sup> The failure to timely remit the balance due on a tax liability caused by an oversight does not, by itself, constitute reasonable cause. (*Appeal of Friedman, supra.*)

Appellants request abatement of the late-payment penalty because the late payment was due to human error and misunderstanding as appellants' accountant mistyped the amount due as \$130,002.00. Appellants assert that they did not receive an insufficient funds notice, and thus, were unaware of the error until they checked the account a few months later in approximately June 2019. Upon noticing the error, appellants immediately informed their accountant who instructed them to pay the tax in June, and thus, they made electronic payments of the tax beginning on June 19, 2019. Appellants further assert that the error only occurred because respondent required an electronic payment. Appellants contend that had respondent allowed appellants to pay via check, their accountant would not have made the typing error, and the tax would not have been paid late. Lastly, appellants refer to their filing and payment history as a basis for waiver of the late payment penalty.

Here, appellants' tax payment for 2018 was due on April 15, 2019. Although appellants believed that their accountant timely paid the amount due, appellants did not make a payment until June 19, 2019, which is after the due date. Appellants did not check their bank account to ensure that the payment had been made until several months later in June 2019. We 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 respondent was actually paid. (*Appeal of Scanlon, supra.*)

Furthermore, every taxpayer has a personal, non-delegable duty to timely file a return. (*United States v. Boyle* (1985) 469 U.S. 241). This non-delegable duty also applies to late payment penalties. (*Appeal of Berolzheimer* (86-SBE-172) 1986 WL 22860.) Thus, appellants' reliance on their tax preparer to timely pay their tax liability does not constitute reasonable cause. Thus, based on the evidence, we find the underpayment was the result of an oversight and a lack

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<sup>3</sup> Because the relevant language of R&TC section 19132 pertaining to the reasonable cause exception is patterned after Internal Revenue Code section 6651, the federal courts' interpretation of the "reasonable cause" standard is persuasive authority in determining the proper construction of this California statute. (*Andrews v. Franchise Tax Bd.* (1969) 275 Cal.App.2d 653, 658; *Rihn v. Franchise Tax Bd.* (1955) 131 Cal.App.2d 356, 360.)

of due diligence by appellants. Failure to timely remit the balance due on a tax liability caused by an oversight does not, by itself, constitute reasonable cause. (*Appeal of Friedman, supra.*) While appellants' accountant made an unintentional error, these facts do not form a basis for granting relief from the penalty. (*Ibid.*)

With regard to appellant's payment history, there is no basis for abating late-payment penalties based on appellants' good-filing history. Instead, the law provides that the California late-payment penalty shall apply unless reasonable cause is shown. (R&TC, § 19132(a).) As noted above, appellants' have failed to establish that their failure to timely pay the tax due was due to reasonable cause. Thus, appellants have failed to establish that the late-payment penalty should be abated.

Issue 2: Whether appellants have established a basis for abatement of the estimated tax penalty.

Internal Revenue Code (IRC) section 6654 imposes an addition to tax, which is treated and often referred to as a penalty, where an individual fails to timely pay estimated tax. Subject to certain exceptions not relevant to the issues on appeal, R&TC section 19136 incorporates IRC section 6654. The estimated tax penalty is similar to an interest charge in that it is calculated by applying the applicable interest rate to the underpayment of estimated tax. (See IRC, § 6654(a) [calculating the estimated tax penalty by reference to the interest rate imposed on underpayments]; R&TC, § 19136(b) [referring to R&TC, § 19521 which, with modification, conforms to the federal interest provisions in IRC, § 6621].) There is no provision in the IRC or R&TC that allows the estimated tax penalty to be abated based solely on a finding of reasonable cause. As a result, there is no general reasonable cause exception to imposition of the estimated tax penalty. (*Appeal of Johnson, 2018-OTA-119P.*) The estimated tax penalty is mandatory unless the taxpayer establishes that a statutory exception applies. (*Ibid.*) Although there is no provision allowing for abatement of the estimated tax penalty based solely on reasonable cause, IRC section 6654(e)(3)(B)<sup>4</sup> provides that the taxing agency may waive the estimated tax penalty if it determines that the taxpayer retired after having attained age 62 in the taxable year for which estimated payments were required to be made or in the taxable year preceding such taxable year, and such underpayment was due to reasonable cause and not willful neglect.

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<sup>4</sup>IRC section 6654(e)(3)(A) allows respondent to waive the addition of tax if it determines that, "by reason of casualty, disaster, or other unusual circumstances the imposition of such an addition to tax would be against equity and good conscience." However, neither party has provided any evidence or argument to show that this section would apply to the present matter.

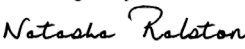
Appellants argue that the estimated tax penalty should be abated because they were not aware of the penalty. K. Raza also stated at the hearing that both appellants were retired and over the age of 62 during the tax year at issue. There is no legal authority that allows the Office of Tax Appeals to abate the estimated tax penalty on the basis that appellants were not aware of the requirement to pay the estimated tax. Furthermore, although both appellants were retired and over the age of 62 during the tax year during which estimated payments were required to be made, appellants have not provided any evidence or argument establishing that either of them retired in 2018, the taxable year for which estimated payments were required to be made, or in the preceding taxable year. Moreover, appellants must also show that the failure to make the estimated tax payments was due to reasonable cause. Appellants' argument that they were unaware of the requirement to pay the estimated tax is insufficient to establish reasonable cause. Ignorance of the law does not excuse compliance with statutory requirements and cannot be a basis for finding reasonable cause. (*Appeal of Diebold, Inc.* (83-SBE-002) 1983 WL 15389.)

HOLDINGS


1. Appellants have not established that their failure to make a timely payment of tax for the 2018 tax year was due to reasonable cause and not willful neglect.
2. Appellants have not established a bases for abatement of the estimated tax penalty imposed under R&TC section 19136.

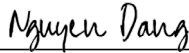
DISPOSITION

Respondent’s action in denying appellants’ claim for refund for the 2018 tax year is sustained.

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 Natasha Ralston  
 Administrative Law Judge

We concur:

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 Huy "Mike" Le  
 Administrative Law Judge

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 Administrative Law Judge

Date Issued: 6/7/2021