

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
J. TYMINSKI

) OTA Case No. 20116915
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OPINION

Representing the Parties:

For Appellant: J. Tyminski

For Respondent: Christopher T. Tuttle, Tax Counsel

A. WONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. Tyminski (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$994.76 for penalties and \$101.49 of interest, all for the 2019 tax year.

Appellant waived his right to an oral hearing, so we decide this matter based on the written record.

ISSUES

1. Whether there is reasonable cause for the late payment of tax sufficient to abate the late-payment penalty of \$674.76.
2. Whether waiving the underpayment-of-estimated-tax penalty (estimated tax penalty) of \$320 is warranted.
3. Whether abating interest of \$101.49 is warranted.

FACTUAL FINDINGS

1. Appellant timely filed his 2019 California income tax return (return), which FTB received on March 11, 2020. For the 2019 tax year, appellant reported a tax liability of \$11,246. Appellant also reported owing \$275 for the estimated tax penalty, resulting in a total amount due of \$11,521.

2. Lines 115 through 117 of appellant’s 2019 return comprise a section entitled “Refund and Direct Deposit,” which includes the following instruction for filers: “Fill in the information to authorize direct deposit of your refund into one or two accounts.” In this section, appellant listed his bank routing and account numbers, as well as “11,521” on line 116 (*Direct deposit amount*). According to appellant, he listed this information not to receive a refund, but “as an authorization for [FTB] to withdraw the balance of \$11521 [*sic*] directly from my bank account.”
3. FTB did not withdraw any funds from appellant’s bank account, and appellant’s \$11,246 tax liability remained unpaid through the applicable July 15, 2020 due date.¹
4. On September 14, 2020, via a written State Income Tax Balance Due Notice (notice), FTB notified appellant that he had an overdue tax balance of \$11,246, plus interest of \$101.49, and that FTB had imposed a late-payment penalty of \$674.76 and an estimated tax penalty of \$320. This notice also indicated that if appellant paid the total balance of \$12,342.25 by September 29, 2020, he could avoid additional interest and penalties.
5. On September 15, 2020, appellant paid \$12,342.25 to FTB.
6. On September 21, 2020, appellant filed a claim for refund with respect to the two penalties, as well as accrued interest.
7. On October 21, 2020, FTB denied appellant’s claim for refund.
8. This timely appeal followed.

DISCUSSION

Issue 1: Whether there is reasonable cause for the late payment of tax sufficient to abate the late-payment penalty of \$674.76.

A late-payment penalty is imposed if a taxpayer fails to pay the amount shown as tax on any return on or before the applicable due date. (R&TC, § 19132(a)(1)(A).) Here, it is undisputed that appellant failed to timely pay \$11,246, the tax liability shown on his 2019 return, by the applicable due date of July 15, 2020.

The late-payment penalty may be abated if the taxpayer shows that the late payment of tax was due to reasonable cause and not due to willful neglect. (R&TC, § 19132(a)(1).) To

¹ Due to the COVID-19 pandemic, FTB postponed the deadline for 2019 tax return payments until July 15, 2020, for all individuals and business entities.

establish reasonable cause, a taxpayer must show that his failure to timely pay tax occurred despite exercising ordinary business care and prudence. (*Appeal of Triple Crown Baseball LLC*, 2019-OTA-025P.) The reason for paying late must be such that an ordinarily intelligent and prudent businessperson would have acted similarly under the same circumstances. (*Ibid.*)

On appeal, appellant states that when he filed his 2019 return in mid-March 2020, he was extremely stressed due to the COVID-19 pandemic and the then-rapidly approaching “lockdown.” Appellant admits that it was a mistake to list his bank routing and account information on his 2019 return and expect FTB would withdraw funds to satisfy his tax liability. However, appellant argues that FTB had a duty, as well as abundant time, to notify him of his mistake so that he could timely pay his \$11,246 tax balance by the applicable due date of July 15, 2020. Appellant contends that, instead, FTB disregarded its alleged duty and, with either negligence or punitive intent, waited until September 2020 to notify him. This, appellant argues, unfairly shifted the burden of action from FTB to appellant.

Here, appellant admits to making a mistake, but 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*, 2018-OTA-077P.) Further, lack of notice from FTB of a failed payment does not negate a taxpayer’s duty of prudence and due care to verify that his payment was successful. (*Appeal of Scanlon*, 2018-OTA-075P.) A reasonably prudent taxpayer exercising due care and diligence is expected to monitor his bank account, ascertain whether an electronic payment was paid to FTB from his account, and, if not paid, ensure payment is submitted. (*Ibid.*; see also *Appeal of Friedman, supra.*) In light of these authorities, as well as appellant’s failure to support his contention that FTB had a duty to notify appellant of his mistake, we conclude that appellant has not established reasonable cause for the late payment of tax sufficient to abate the late-filing penalty of \$674.76.

Issue 2: Whether waiving the estimated tax penalty of \$320 is warranted.

Subject to certain exceptions not relevant to the issues on appeal, California conforms to Internal Revenue Code (IRC) section 6654 and imposes an estimated tax penalty on individuals for failing to make timely estimated income tax payments. (R&TC, § 19136(a); IRC, § 6654.). The estimated tax penalty is similar to an interest charge and applies from the due date of the

estimated tax payment until, as relevant here, the due date for full payment of tax.² (IRC, § 6654(b)(2).) Estimated tax payments are generally required to be paid by persons who owe more than \$500 in tax after applying income tax withholdings and credits. (R&TC, § 19136(c)(2).)

The estimated tax penalty is mandatory unless the taxpayer establishes that at least one of two statutory exceptions applies. (*Appeal of Johnson*, 2018-OTA-119P; *Appeal of Saltzman*, 2019-OTA-070P.) The first exception is found in IRC section 6654(e)(3)(A), which provides that the taxing agency may waive the estimated tax penalty if it determines that, “by reason of casualty, disaster, or other unusual circumstances the imposition of [the estimated tax penalty] would be against equity and good conscience.” The exception for unusual circumstances is considerably narrower than that for reasonable cause. (IRS Field Service Advisory (June 2, 1994) 1994 WL 1725487.) The IRS has waived the estimated tax penalty in the following specific situations: a significant change in the tax law; a natural disaster; a required change in accounting method; or a government action or inaction that caused extreme difficulty in estimating the tax. (*Ibid.*)

The second exception is found in IRC section 6654(e)(3)(B), which provides that the taxing agency may waive the estimated tax penalty if it determines that (i) during the applicable tax year or the preceding year, the taxpayer either retired after having attained age 62 or became disabled, and (ii) the underpayment was due to “reasonable cause” and not due to willful neglect.

As relevant here, the United States Tax Court has waived the estimated tax penalty where it found that a taxpayer did not make payment because of severe, incapacitating health problems. (*Meyer v. Commissioner*, T.C. Memo. 2003-12 (*Meyer*).) Specifically, in *Meyer*, the court found that, during the years at issue, the taxpayer was initially diagnosed with HIV and later with AIDS, and his infection was “very active” and required strong antiviral medication to combat it. (*Ibid.*) The court also found that, at the same time, the taxpayer had suffered a nervous breakdown and had to take a leave of absence from his job. (*Ibid.*) On these facts, the United States Tax Court waived the estimated tax penalty pursuant to IRC section 6654(e).

On appeal, appellant repeats the argument he made with respect to the late-filing penalty: in mid-March 2020, when he filed his 2019 return, he was “extremely stressed” due to the COVID-19 pandemic and the then-rapidly approaching lockdown. He admits that it was a

² Where estimated tax payments are due, R&TC section 19136.1(a)(2) generally requires, for California income tax purposes, that the payments be made in installments on or prior to April 15 and June 15 of the applicable tax year, and January 15 of the subsequent tax year.

mistake to list his bank routing and account information on his 2019 return and expect FTB would withdraw funds to satisfy his tax liability. However, appellant asserts that FTB had a duty to timely notify him of his mistake so that he could pay his \$11,246 tax balance by the applicable July 15, 2020 deadline, but FTB disregarded this alleged duty.³

Here, appellant did not pay his required 2019 estimated tax payments by the appropriate deadlines, so imposing the estimated tax penalty was mandatory. This penalty will be waived if appellant establishes that a statutory exception applies. Although appellant asserts that he was “extremely stressed” due to the COVID-19 pandemic and the imminent lockdown in March 2020, this does not explain why he failed to make timely estimated tax payments, which were due on April 15, 2019, June 15, 2019, and January 15, 2020. We find no evidence in the record that appellant was incapacitated by a severe physical or mental health condition, either during the 2019 tax year or in early 2020. We also find no evidence in the record that appellant otherwise qualified for either statutory exception to imposing the estimated tax penalty. Accordingly, we conclude that waiving the estimated tax penalty of \$320 is not warranted.

Issue 3: Whether abating interest of \$101.49 is warranted.

If any amount of tax is not paid by the due date, interest is required to be imposed from the due date until the date the taxes are paid. (R&TC, § 19101(a).) Interest is not a penalty but is merely compensation for a taxpayer’s use of the money. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.)

On appeal, appellant concedes that he mistakenly listed his bank routing and account information on his 2019 return, expecting FTB would withdraw funds to satisfy his tax liability. However, appellant contends that FTB disregarded its alleged duty to timely notify him of his mistake so that he could, in turn, timely pay his tax balance by the applicable July 15, 2020 deadline.

Under R&TC section 19104, FTB may abate all or a part of any interest on a deficiency to the extent that interest is attributable in whole or in part to any unreasonable error or delay committed by FTB in the performance of a ministerial or managerial act. (R&TC,

³ Appellant also contends that the estimated tax penalty is “baseless” and incorrect because his tax preparation software correctly accounted for all of his income for the 2019 tax year in calculating his state tax liability. However, this argument is based on a confusion: although commonly referred to as the “estimated tax” penalty, this penalty is not actually imposed for failing to estimate accurately one’s tax liability, but rather for failing to make timely payments of that estimated tax liability. Accordingly, we will not address this argument further.

§ 19104(a)(1).) An error or delay can only be considered when no significant aspect of the error or delay is attributable to appellant and after FTB has contacted appellant in writing with respect to the deficiency or payment. (R&TC, § 19104(b)(1).) We only review FTB's determination to not abate interest for an abuse of discretion. (R&TC, § 19104(b)(2)(B).) To show an abuse of discretion, appellant must establish that, in refusing to abate interest, FTB exercised its discretion arbitrarily, capriciously, or without sound basis in fact or law. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.)

Here, per R&TC section 19104(b)(1), we can only consider any alleged FTB error or delay that took place after September 14, 2020, the date of FTB's first written contact with appellant regarding his deficiency following the applicable July 15, 2020 due date for 2019 tax return payments. However, appellant paid off the overdue tax, penalties, and accrued interest of \$101.49 the very next day, on September 15, 2020. By doing this, appellant avoided additional interest per FTB's September 14, 2020 notice. Thus, there is no FTB error, delay, or associated interest that we can consider or evaluate.

For the above-stated reasons, we find that abating interest of \$101.49 is not warranted and FTB did not abuse its discretion in declining to abate interest.

HOLDINGS

1. There is no reasonable cause for the late payment of tax sufficient to abate the late-payment penalty of \$674.76.
2. Waiving the estimated tax penalty of \$320 is not warranted.
3. Abating interest of \$101.49 is not warranted.

DISPOSITION

We sustain FTB’s denial of appellant’s claim for refund with respect to the late-payment and estimated tax penalties totaling \$994.76, as well as accrued interest of \$101.49, all for the 2019 tax year.

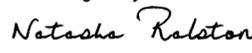
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 Andrew Wong
 Administrative Law Judge

We concur:

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 Administrative Law Judge

Date Issued: 8/16/2021