

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
L. ROUGEAU

) OTA Case No. 20127069
)
)
)
)

OPINION

Representing the Parties:

For Appellant: Creighton J. Spies, EA

For Respondent: Di T. Nguyen, Graduate Student Assistant

S. RIDENOUR, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, L. Rougeau (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$2,373.06, plus interest, for the 2019 tax year.

Appellant waived the right to an oral hearing; therefore, we decide this appeal based on the written record.

ISSUES

1. Whether appellant has established reasonable cause for failing to make a timely payment of tax for the 2019 tax year.
2. Whether appellant has established a legal basis to abate interest.

FACTUAL FINDINGS

1. In 2019, appellant made a withdrawal from her individual retirement account (IRA). Appellant did not have taxes withheld from the distribution.
2. On July 15, 2020, appellant timely filed a 2019 California tax return, reporting an IRA distribution, of which \$435,000 was taxable income and generated most of appellant’s California adjusted gross income (AGI). Appellant also reported zero California income

tax withheld and tax due of \$39,551, which appellant untimely remitted on September 5, 2020.

3. FTB assessed a late-payment penalty of \$2,373.06 and issued appellant a State Income Tax Balance Due Notice.
4. Subsequently, appellant paid the outstanding liability and filed a claim for refund, which FTB denied. This timely appeal followed.

DISCUSSION

Issue 1: Whether appellant has established reasonable cause for failing to make a timely payment of tax for the 2019 tax year.

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.) For the 2019 tax year, due to COVID-19, the filing and payment due date was postponed to July 15, 2020. Appellant did not remit payment until September 5, 2020; therefore, FTB properly imposed the late-payment penalty.

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)(1).) To establish reasonable cause for a late payment of tax, a taxpayer must show that the failure to make a timely payment occurred despite the exercise of ordinary business care and prudence. (*Appeal of Scanlon*, 2018-OTA-075P). The taxpayer bears the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Appeal of Triple Crown Baseball*, 2019-OTA-025P.) As to appellant's burden, the applicable standard of proof is by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(c).) To meet this evidentiary standard, a party must establish by documentation or other evidence that the circumstances it asserts are more likely than not to be correct. (*Concrete Pipe and Products of California, Inc. v. Construction Laborers Pension Trust for Southern California* (1993) 508 U.S. 602, 622.)

Appellant's withdrawal in 2019 from her IRA account generated most of her California AGI and tax due of \$39,551, which appellant untimely paid. Appellant does not dispute that FTB properly imposed the late-payment penalty, but rather argues that the penalty should be

abated due to reasonable cause. Appellant argues that due to medical and mobility issues, she decided to sell her house and purchase a new home. Appellant contends that she expected to sell her original home before purchasing the new home; however, since the original home did not sell on time, appellant withdrew from her IRA account to pay the down payment. Appellant states that since she knew that there would be federal and state tax due on the IRA distribution, she hired her current representative, and they put together two plans to ensure appellant timely remitted the tax, and that both plans fell through for reasons out of appellant's control. First, appellant was going to withdraw additional funds from her IRA account, and alternatively, she was planning on using an anticipated inheritance, to pay the tax due of \$39,551.

Specifically, appellant asserts that while she originally planned to withdraw additional funds from her IRA account, she did not know her 2019 tax liability until June 2020, due to delays with her accountant and COVID-19 restrictions, at which point an IRA distribution would not be made before the July 15, 2020 due date.

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.) A taxpayer's difficulty in determining income with exactitude does not negate the requirement that taxpayers make payments of tax based upon a reasonably accurate estimate of their tax liability. (*Appeal of Sleight* (83-SBE-244) 1983 WL 15615.) A taxpayer must establish that he or she could not have acquired the information necessary to make an estimate of their tax liability. (*Appeal of Moren, supra.*) As noted above, appellant's 2019 withdrawal from her IRA account generated most of her California AGI; therefore, we find that as early as the date of the withdrawal, appellant acquired the necessary information to make a reasonably accurate estimate of her 2019 tax liability and make a timely payment accordingly.

As for appellant alternatively planning on using the anticipated inheritance from her mother's estate to pay the tax liability, appellant indicates that her mother passed away in March 2020, and that she expected receipt of her inheritance within two or three months (i.e., by May or June 2020), and planned on using the funds to timely remit payment. Appellant asserts that due to COVID-19, appellant's inheritance distribution was postponed until September 3, 2020, and appellant immediately remitted payment on September 5, 2020. Regardless of when appellant anticipated her inheritance, she did not receive it before the payment due date. It requires no special training or effort to ascertain a deadline and make sure that it is met, and a taxpayer has a

personal obligation to meet statutory deadlines. (See *United States v. Boyle* (1985) 469 U.S. 241, 251-252.) We believe that an ordinarily intelligent and prudent businessperson acting similarly under the circumstances, upon realizing that the inheritance would not allow for a timely payment, would arrange for another option to timely pay the tax due of \$39,551, to make sure that the deadline was met. Therefore, we find appellant's reliance on her anticipated inheritance to pay the tax due does not amount to reasonable cause for failing to make a timely payment of tax for the 2019 tax year.

We next consider appellant's alleged financial difficulties. Financial hardship may constitute reasonable cause to excuse the late payment of tax. Reasonable cause based on financial hardship is explained in federal Treasury Regulation section 301.6651-1(c)(1), which provides that the taxpayer must show the exercise of ordinary business care and prudence and that the taxpayer was either unable to pay the tax or would suffer an undue hardship by paying by the due date.¹ Treasury Regulation section 301.6651-1(c)(1) further provides that all the facts and circumstances will be considered, including the amount and nature of the taxpayer's expenditures in light of the income (or other amounts) the taxpayer could, at the time of such expenditures, reasonably expect to receive prior to the date prescribed for the payment of the tax. Thus, taxpayers can prove ordinary business care and prudence by showing reasonable efforts to conserve sufficient assets in marketable form to satisfy the tax liability. Additionally, "undue hardship" is defined in Treasury Regulation section 1.16161-1(b) as not merely a "general hardship," but rather "more than an inconvenience to the taxpayer."

Regarding appellant's efforts to secure funding to timely pay her 2019 California income tax obligation, we do not believe she has met her burden of proving reasonable cause to abate the late-payment penalty. Appellant took a large distribution from her IRA account for purposes of purchasing a new home. Appellant was in control of the timing and amount of the IRA distribution; nevertheless, there is no evidence that appellant made any effort to conserve a sufficient portion of the distribution for California taxes. Records also indicate appellant did not have taxes withheld from the distribution. As such, appellant did not take steps to ensure she conserved sufficient funds from her IRA withdrawal to pay the tax that would be owed. As for

¹ Although there are no FTB regulations interpreting R&TC section 19132, that section is patterned after Internal Revenue Code section 6651. Therefore, the interpretation and effect given the federal provision by the federal courts and administrative bodies are relevant in determining the proper construction of the 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.)

appellant's contention that she planned on using her inheritance from her mother's estate to pay the tax liability, appellant indicates that her mother passed away in March 2020, and appellant's 2019 tax liability was due July 15, 2020. Appellant has not established that it was reasonable to expect her mother's estate to close and be distributed within approximately four months, whether before or during COVID-19, or that it was reasonable to rely on the receipt of her inheritance with an uncertain distribution date to make a timely tax payment. As such, we find that appellant has not shown that reliance on her anticipated inheritance was a reasonable effort to conserve sufficient assets in marketable form to satisfy the tax liability.

Furthermore, appellant expended the IRA distribution in 2019 to buy her home and, pursuant to Treasury Regulation section 301.6651-1(c)(1), she has not demonstrated what income, if any, she reasonably could have expected at the time of the expenditure to receive prior to July 15, 2020, to pay the tax liability. Appellant also has not demonstrated why it was unreasonable for her to use the proceeds from the sale of her original home to pay the tax liability. In addition, we note that real estate is considered an illiquid asset. (See *In re Hokulani Square, Inc.* (9th Cir. 2015) 776 F.3d 1083, 1086 [citing Ping Cheng, et al., *Illiquidity and Portfolio Risk of Thinly Traded Assets*, 36 J. Portfolio Mgmt. 126, 126 (2010), which categorizes real estate as a highly illiquid asset].) A taxpayer who invests funds in illiquid assets has not exercised ordinary business care and prudence in providing for the payment of the tax liability unless, at the time of the investment, the remainder of the taxpayer's assets and estimated income will be sufficient to pay the tax, or it can be reasonably foreseen that the illiquid investment made by the taxpayer can be utilized (by sale or as security for a loan) to realize sufficient funds to satisfy the tax liability. (Treas. Reg. § 301.6651(c)(1).) Nevertheless, appellant has not demonstrated what remaining assets or estimated income she had at the time she invested funds to purchase her new home, let alone whether the amounts were sufficient to pay the tax, or whether she attempted to leverage her home to realize sufficient funds to satisfy the tax liability.

Finally, appellant has provided no evidence to establish that she would have suffered undue hardship had she made a timely tax payment. Appellant has not introduced any evidence showing that on or before July 15, 2020, her financial difficulties prevented her from paying her 2019 tax liability, nor has she offered any detailed information about her financial circumstances on or before the payment deadline. Instead, appellant argues that she and her representative put

together two plans to ensure her timely remittance, and that both plans fell through for reasons out of her control. Thus, we have no evidence upon which to base a finding that undue hardship would have resulted from the payment of the tax owed. Moreover, for the reasons discussed above, we find that regardless of her financial circumstances, appellant did not exercise ordinary business care and prudence in attempting to timely pay her tax liability. Therefore, we find that appellant failed to meet her burden of proving reasonable cause for failing to make a timely payment of tax for the 2019 tax year.

Issue 2: Whether appellant has established a legal basis to abate interest.

If any amount of the 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 compensation for the taxpayer's use of money which should have been paid to the state. (*Appeal of Balch*, 2018-OTA-159P.) Imposition of interest is mandatory, and it can only be abated in certain limited situations when authorized by law. (R&TC, § 19101(a); *Appeal of Balch*, *supra*.) There is no reasonable cause exception to the imposition of interest. To obtain relief from interest, appellant must qualify under R&TC section 19104, 19112, or 21012; however, based on the evidence and appellant's arguments, none of these statutory provisions apply. Thus, appellant has not established any basis for interest abatement for the tax year at issue.

HOLDINGS

1. Appellant has not established reasonable cause for failing to make a timely payment of tax for the 2019 tax year.
2. Appellant has not established a legal basis to abate interest.

DISPOSITION

FTB’s action denying appellant’s claim for refund is sustained.

DocuSigned by:
Sheriene Anne Ridenour
 67F043D83EF547C...

 Sheriene Anne Ridenour
 Administrative Law Judge

We concur:

DocuSigned by:
Alberto T. Rosas
 B969EE4BD4914D5...

 Alberto T. Rosas
 Administrative Law Judge

DocuSigned by:
Josh Lambert
 CB1F7DA37831416...

 Josh Lambert
 Administrative Law Judge

Date Issued: 10/14/2021