

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 21068009
S. SOUMEEH)
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OPINION

Representing the Parties:

For Appellant: S. Soumeeh
For Respondent: Alisa Pinarbasi, Tax Counsel

N. DANG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, S. Soumeeh (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s refund claim of \$2,844.70 for the 2019 tax year.¹

We decide the matter based on the written record because appellant waived the right to an oral hearing.

ISSUE

Whether the underpayment of estimated tax penalty, late-payment penalty and interest should be abated.

FACTUAL FINDINGS

1. For the 2019 tax year, appellant failed to make sufficient estimated tax payments and timely pay her tax liability.
2. Consequently, respondent assessed an underpayment of estimated tax penalty, a late-payment penalty and applicable interest.
3. Appellant paid the amount due and filed a refund claim seeking abatement of the

¹ Appellant’s refund claim states a refund amount of \$2,843.75. However, the amount at issue is \$2,844.70, which includes the underpayment of estimated tax penalty of \$135, the late-payment penalty of \$2,281.70, and interest of \$428.

penalties and interest.

4. Respondent denied appellant's refund claim in its entirety, and this timely appeal followed.

DISCUSSION

Appellant asserts that abatement of the penalties and interest is warranted due to the COVID-19 related difficulties she experienced during "tax season," which took a physical and emotional toll on her. More specifically, appellant contends that during this time, she was prevented from attending to any tax matters because she was forced to move out of her home after all the family members residing with her had contracted COVID-19. Appellant also requests "first-time abatement" of the penalties based on her history of timely filing and payments.

We begin by addressing interest. To obtain relief from interest a taxpayer must qualify under one of the waiver provisions of R&TC sections 19104 (pertaining to unreasonable error or delay by respondent in the performance of a ministerial or managerial act), 19112 (pertaining to extreme financial hardship caused by significant disability or other catastrophic circumstance), or 21012 (pertaining to reasonable reliance on the written advice of respondent). (*Appeal of Balch*, 2018-OTA-159P.) Appellant has not alleged, and the record does not reflect, that any of these waiver provisions are applicable here. Accordingly, we find there is no basis for abating interest.

Next, we address the underpayment of estimated tax penalty. There exist only two conditions under which the underpayment of estimated tax penalty may be waived. These conditions are where an underpayment of tax was due to: (1) casualty, disaster, or other unusual circumstances such that imposition of the penalty would be against equity and good conscience; or (2) reasonable cause and not willful neglect, and either the taxpayer retired after having attained age 62 or became disabled, in the taxable year for which the estimated tax payments were required to be made or in the previous taxable year. (Internal Revenue Code (IRC), § 6654(e)(3)(A)-(B).)² The taxpayer bears the burden of proving that waiver of the penalty is warranted. (*Appeal of Saltzman*, 2019-OTA-070P.)

Appellant failed to provide evidence indicating that she meets any of the above two conditions for penalty abatement. For instance, there is no evidence supporting appellant's

² California conforms (with some modifications) to IRC section 6654 at R&TC section 19136.

contention that her family members contracted COVID-19, the impact this may have had upon appellant, the time these events occurred, or that appellant retired after having attained age 62 or became disabled, in 2018 or 2019. Thus, appellant has not shown that the underpayment of estimated tax penalty should be abated.

Regarding the late-payment penalty, it shall not apply if the failure to timely pay is due to reasonable cause and not due to willful neglect. (R&TC, § 19132(a).) To establish reasonable cause, the taxpayer must show that the failure to timely file a return occurred despite the exercise of ordinary business care and prudence. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.) Respondent’s imposition of the late-payment penalty is presumed to be correct, and the burden of proof is on the taxpayer to establish otherwise. (*Appeal of Triple Crown Baseball LLC*, 2019-OTA-025P.) Unsupported assertions are insufficient to establish reasonable cause. (*Appeal of Scanlon*, 2018-OTA-075P.)

Appellant’s position again lacks evidentiary support. While we are sympathetic, without evidence detailing exactly how appellant or her family were affected by COVID-19 and the time involved, we are unable to determine whether appellant’s failure to meet her tax obligations in a timely fashion was reasonable in light of the circumstances. Accordingly, we find appellant has not established reasonable cause for abating the late-payment penalty.

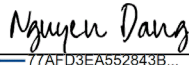
Finally, we note that, unlike the IRS, California does not allow for a “first-time abatement” of penalties. Therefore, we are unable to abate the penalties on this basis.

HOLDING


The underpayment of estimated tax penalty, late-payment penalty and interest should not be abated.


DISPOSITION

We sustain respondent’s action.

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Nguyen Dang
Administrative Law Judge

We concur:

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Josh Lambert
Administrative Law Judge

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Michael F. Geary
Administrative Law Judge

Date Issued: 11/22/2021