

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 20086498
)
G. MACDONALD AND)
G. D. MACDONALD)
)
)

OPINION

Representing the Parties:

For Appellants: Stewart A. Farber, CPA

For Respondent: Phillip C. Kleam, Tax Counsel, III

N. RALSTON, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) 19324, G. MacDonald and G. D. MacDonald (appellants) appeal an action by the Franchise Tax Board (respondent) denying appellants' claim for refund of \$35,258.24, plus applicable interest, for the 2018 tax year.

Office of Tax Appeals Administrative Law Judges Josh Lambert, Sheriene Anne Ridenour, and Natasha Ralston held an oral hearing for this matter on December 14, 2021.¹ At the conclusion of the hearing, the record was closed, and this matter was submitted for an opinion.

ISSUE

Whether appellants have established reasonable cause for abatement of the late-payment penalty.

FACTUAL FINDINGS

1. Appellants timely filed their 2018 California Non-Resident or Part-Year Resident Income Tax Return within the automatic extension period on October 11, 2019, reporting a balance due of \$457,075, consisting of tax of \$440,728, interest of \$11,472, and an

¹ The oral hearing was conducted electronically via Webex with the consent of the parties.

- underpayment of estimated tax penalty of \$4,875. Appellants paid the \$457,075 balance due with the filing of their return on October 11, 2019.
2. Respondent determined that appellants' payment was late and imposed a late-payment penalty of \$35,258.24, plus applicable interest.
 3. Respondent sent appellants a Notice of Tax Return Change which imposed the late-payment penalty, plus applicable interest and notified appellants of the then balance due.²
 4. Appellants disputed the penalty, contending that they did not receive accurate Schedules K-1 from their LLC, and thus could not timely file their California return.
 5. On January 27, 2020, appellants sent respondent a letter requesting waiver of the late-payment penalty.
 6. On February 11, 2020, respondent sent appellants a penalty waiver denial.
 7. Appellants paid the balance due via two payments, on March 18, 2020, and April 17, 2020.³
 8. Respondent treated appellants' penalty waiver request dated January 27, 2020, as a claim for refund and issued a Notice of Action on June 1, 2020, denying appellants' claim for refund.
 9. This timely appeal followed.

DISCUSSION

Imposition of 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. When respondent imposes a penalty, it is presumed to have been imposed correctly. (*Appeal of Xie*, 2018-OTA-076P.) R&TC section 19001 provides that the personal income tax "shall be paid at the time and place fixed for filing the return (determined without regard to any extension for time for filing the return)." As such, the payment due date was the original filing deadline of April 15, 2019, not the October 15, 2019 extended filing deadline. Because appellants did not

² The Notice also removed the \$4,875 underpayment of estimated tax penalty appellants self-assessed on their 2018 return.

³ Appellants paid \$31,557.65, via check. Because appellants were required to pay electronically pursuant to R&TC section 19011.5, respondent imposed a mandatory e-pay penalty of \$315.58, which appellants paid on April 17, 2020. The mandatory e-pay penalty is not at issue on appeal.

completely satisfy their 2018 tax liability until October 11, 2019, six months after the payment due date, respondent properly imposed the late-payment penalty.

Despite this, appellants contend the late-payment penalty was not properly imposed because the safe harbor (or relief provisions) provided in R&TC section 19136(c)(2) should apply. However, R&TC section 19136(c)(2) is applicable to the *underpayment of estimated tax penalty*, not the *late-payment penalty* at issue in this appeal. R&TC section 19136(c)(2) specifically provides:

An addition to tax shall not be imposed under *this section* if the tax imposed under [R&TC section] 17041 or 17048 and the tax imposed under [R&TC section] 17062 for the preceding taxable year, minus the sum of any credits against the tax provided by Part 10 (commencing with [R&TC section] 17001) or this part, or the tax computed under [R&TC section] 17041 or 17048 upon the estimated income for the taxable year, minus the sum of any credits against the tax provided by Part 10 (commencing with [R&TC section] 17001) or this part, is less than five hundred dollars (\$500)..... (R&TC, § 19136(c)(2), emphasis added.)

When R&TC section 19136(c)(2) states that an addition to tax shall not be imposed under “this section,” it is specifically referencing R&TC section 19136, which imposes the *underpayment of estimated tax penalty*. The *underpayment of estimated tax penalty* under R&TC section 19136 and the *late-payment penalty* under R&TC section 19132 are separate and distinct penalties. Both may be imposed where the facts and circumstance establish that the statutory requirements for the imposition of the each have been met. (See e.g., *Appeal of Scanlon*, 2018-OTA-075P [upholding respondent’s imposition of both the late-penalty under R&TC section 19132 and the underpayment of estimated tax penalty under R&TC section 19136].) Because the *late-payment penalty* is imposed by R&TC section 19132, not R&TC section 19136, the safe-harbor provided under R&TC section 19136(c)(2) is not applicable to the *late-payment penalty* at issue in this appeal. Respondent properly imposed the late-payment penalty because appellants did not completely satisfy their 2018 tax liability until October 11, 2019, which was six months after the payment due date for the 2018 tax year.

Reasonable Cause

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 the late payment of tax, a taxpayer must show that the failure to make a timely payment of the proper amount of tax occurred despite the exercise of ordinary business care and prudence. (*Appeal of Moren*, 2019-OTA-176P.) The taxpayer bears the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Ibid.*) Unsupported assertions are not sufficient to satisfy a taxpayer’s burden of proof. (*Appeal of Scanlon*, *supra.*)

Appellants contend that reasonable cause for the late payment of tax existed here because appellants’ California tax return included 18 Schedules K-1 which were not provided to appellants until September 2019. Appellants contend that they could not anticipate the results of the Schedules K-1 as they were “very complex reflecting complex property operations, cost and depreciation calculation in their company management fees among others.” Appellants note that they filed a timely tax return in October 2019, just days after receiving the Schedules K-1, and fully paid the tax due at that time.

However, a taxpayer’s asserted 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*, *supra.*) Instead, the taxpayer must show the efforts made to acquire that information from the source that held it. (*Ibid.*) While we understand appellants’ assertions regarding the complexity of the transaction, and the difficulty in calculating or determining their tax liability prior to the receipt of the Schedule K-1s, appellants have not provided any evidence of the transactions and have failed to explain what efforts they made (if any) to obtain the information or documentation necessary to timely calculate and pay their taxes for the 2018 tax year. Again, in order to establish reasonable cause, appellants “must show the efforts made to acquire that information from the source that held it, and that difficulties in obtaining the necessary information led to the delay in payment.” (*Ibid.*) Appellants have failed to make such a showing here.

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.) Here, we find that an ordinarily intelligent and prudent businessperson would make an effort to determine their tax liability with reasonable accuracy prior to the due date for the payment of tax. If unable to do so based on the information available to appellants, ordinary business care and prudence would require efforts by appellants

to obtain the information necessary to make such determination from the source that held it prior to the payment deadline.

Appellants do not describe any efforts they made to calculate or determine their tax liability before the April 15, 2019 payment deadline, or if unable to make such a determination on their own, what steps they took to try to obtain information necessary to make such a determination from the LLCs prior to this deadline. Instead, appellants merely assert without evidence or support that there was “no way for [appellants’] to know what their tax burden was going to be until they received this [Schedule] K-1.” These unsupported assertions are not sufficient to establish reasonable cause. (*Appeal of Scanlon, supra.*) If appellants were unable to determine their 2018 tax liability without additional information, appellants must show that they nevertheless made efforts to seek such information prior to the April 15, 2019 payment deadline rather than simply waiting for the Schedules K-1 which would not be provided to them until six months after this deadline, in September 2019. Appellants failed to demonstrate that they made such efforts and, therefore, appellants have failed to establish reasonable cause for the untimely payment of tax.

HOLDING

The late-payment penalty under R&TC section 19132 was properly imposed, and appellants have failed to establish reasonable cause for the late payment such that the penalty should be abated.

DISPOSITION

Respondent’s actions in denying appellants’ claim for refund is sustained.

DocuSigned by:
Natasha Ralston

DE5900E566FB40E...
Natasha Ralston
Administrative Law Judge

We concur:

DocuSigned by:
Josh Lambert

CB1F7DA37831416...
Josh Lambert
Administrative Law Judge

DocuSigned by:
Sheriene Anne Ridenour

67F043D83EF547C...
Sheriene Anne Ridenour
Administrative Law Judge

Date Issued: 1/10/2022