

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 20096594
R. MCAWEENEY AND)
A. MCAWEENEY)
)

OPINION

Representing the Parties:

For Appellant: Paul McGovern, Representative

For Respondent: Gi Jung Nam, Tax Counsel

J. LAMBERT, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, R. McAweeney and A. McAweeney (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants' claim for refund of a late payment penalty of \$41,458.89 and an underpayment of estimated tax (estimated tax) penalty of \$24,026 for the 2018 tax year.¹

Appellants waived the right to an oral hearing; therefore, the matter is being decided based on the written record.²

ISSUES

1. Whether the late payment penalty should be abated.
 2. Whether the estimated tax penalty should be abated.

¹ FTB considers the claim for refund of the estimated tax penalty as deemed denied and does not dispute inclusion of the estimate tax penalty in this appeal.

² Appellants originally requested an oral hearing in this matter. However, appellants failed to complete a Response to Notice of Oral Hearing sent to appellants by mail on December 10, 2021, and by email on January 4, 2022. Therefore, this appeal was removed from the February 23, 2022 oral hearing calendar and is now decided based on the written record.

FACTUAL FINDINGS

1. On October 15, 2019, appellants timely filed a joint California income tax return for the 2018 tax year, reporting tax due after applying estimated tax and other payments. Appellants paid the amount due on October 15, 2019.
2. FTB's records indicate that appellants attempted to make an estimated tax payment of \$233,000 on June 14, 2018, for the 2018 tax year, but it was dishonored. FTB's records indicate the same amount was paid for the 2017 tax year on August 31, 2018.
3. FTB sent appellants a Notice of Tax Return Change because it received a different amount of estimated tax and extension payments than reported on appellants' return.
4. FTB determined the late paid tax to be \$248,077. FTB imposed a late payment penalty and estimated tax penalty.
5. Appellants paid the balance due and filed a claim for refund, which FTB denied.
6. This appeal timely followed.

DISCUSSION

Issue 1: Whether the late payment penalty should be abated.

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.) 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 Scanlon*, 2018-OTA-075P.)

In *U.S. v. Boyle* (1985) 469 U.S. 241, 251, the Supreme Court stated that it is reasonable for a taxpayer to rely on the advice of an accountant or attorney when that accountant or attorney advises a taxpayer as to a matter of tax law, such as whether a tax liability exists or a return is required to be filed. However, the Supreme Court also stated that one does not need to be a tax expert to know that tax returns have fixed filing dates and taxes must be paid when due. (*Ibid.*) A taxpayer's reliance on an accountant or attorney cannot be a substitute for compliance with an

unambiguous statute and “it requires no special training or effort to ascertain a deadline and make sure that it is met.” (*Ibid.*, at p. 252.)

Appellants contend that the late payment is the result of a bank error made in 2018. Appellants assert that a payment of \$233,000 for the 2018 tax year was attempted but was rejected.³ Appellants assert that, upon learning that the \$233,000 was not paid, they made the payment on August 31, 2018, but that FTB applied the payment to 2017. FTB’s records indicate that appellants attempted to make an estimated tax payment of \$233,000 on June 14, 2018, for the 2018 tax year, but it was dishonored by appellants’ bank. FTB’s records also indicate the same amount was electronically paid by appellants for the 2017 tax year on August 31, 2018. FTB’s records do not indicate that FTB applied the payment to 2017, but that appellants requested the payment to be applied to 2017.

Appellants contend that a change in tax professionals resulted in misunderstandings by the new tax preparer. Appellants contend that they have reasonable cause for the late payment because they were unaware that the payment did not go through and relied on the tax professional to make sure the payment had been made. However, this does not qualify as reasonable reliance on a tax professional because it is not a matter of tax law but compliance with a fixed deadline. (See *U.S. v. Boyle, supra*, 469 U.S. at p. 251-252.) In addition, the attempted payments were of a significant amount, such that it would be reasonable to expect a taxpayer exercising due care and diligence to notice that the payments were not debited from the bank account. (*Appeal of Friedman*, 2018-OTA-077P.) We believe that a taxpayer exercising ordinary business care and prudence would have checked their bank account, recognized that these significant tax payments had not been debited from their account, and promptly made arrangement for payment. The exercise of ordinary business care and prudence includes an expectation that reasonably prudent taxpayers would monitor their bank account and quickly ascertain whether a scheduled electronic payment to FTB was properly paid. (*Appeal of Scanlon, supra*.) Therefore, appellants have not shown reasonable cause for failing to timely pay the tax due.

³ Appellant’s attempted 2017 extension payment of \$376,009 also was rejected. Both attempted payments (i.e., the 2017 extension payment attempted on April 2018, and the 2018 attempted payment of \$233,000 on June 14, 2018) were rejected by appellants’ bank because of errors in entering the account number when making the attempted payments.

Issue 2: Whether the estimated tax penalty should be abated.

California conforms to Internal Revenue Code (IRC) section 6654, and imposes an estimated tax penalty for the failure to timely make 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 the date it is paid. (IRC, § 6654(b)(2).)

Appellants argue that the penalty amount should be refunded based on reasonable cause, for the reasons described above. There is no general reasonable cause exception to the estimated tax penalty. (*Appeal of Scanlon, supra.*) However, IRC section 6654(e)(3) provides limited exceptions to waive the estimated tax penalty in two situations involving extreme hardship: (1) if, by reason of casualty, disaster, or other unusual circumstances, imposing the penalty would be against equity and good conscience; or (2) if the late payment was due to reasonable cause and not willful neglect, but only for individuals who retired after attaining the age of 62 in the taxable year or who became disabled in the taxable year. (IRC, § 6654(e)(3)(A)-(B).) Appellants do not argue, and the evidence does not show, that they meet the requirements of the exceptions provided in IRC section 6654(e)(3). Accordingly, appellants have failed to establish a basis on which to abate the estimated tax penalty.

HOLDINGS

1. The late payment penalty should not be abated.
2. The estimated tax penalty should not be abated.

DISPOSITION

FTB's action is sustained.

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Josh Lambert

Administrative Law Judge

We concur:

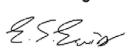
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Administrative Law Judge

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Elliott Scott Ewing

Administrative Law Judge

Date Issued: 4/12/2022