

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:

S. FENLEY AND
R. FENLEY

) OTA Case No. 21037361
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OPINION

Representing the Parties:

For Appellants:

Quinn A. Disparte, Attorney
Suzanne Disparte, Attorney

For Respondent:

Brad J. Coutinho, Tax Counsel III

S. HOSEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, S. Fenley (appellant-wife) and R. Fenley (appellant-husband) (collectively, appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claims for refund of \$1,556 for the 2017 tax year and \$14,794 for the 2018¹ tax year.²

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

ISSUES

1. Whether appellants have established reasonable cause to abate the late filing penalties imposed for the 2017 and 2018 tax years.
2. Whether appellants have established reasonable cause to abate the demand penalty imposed for the 2017 tax year.
3. Whether appellants have established a basis to abate the estimate tax penalty for the 2018 tax year.

¹ For the 2018 tax year, the claim for refund amount was adjusted following an amended return filed on December 7, 2020.

² Appellants’ claims for refund claim \$5,225.17 for the 2017 tax year and \$34,239.03 for the 2018 tax year. While it is unclear where these amounts come from, on appeal appellants now only contest the penalties.

FACTUAL FINDINGS

1. FTB received information that appellants earned interest, dividend, K-1, and miscellaneous income sufficient to show appellants had a filing requirement for the 2017 tax year, though they had not filed a return. FTB issued a Demand for Tax Return (Demand). Appellants did not respond. FTB then issued a Notice of Proposed Assessment (NPA) proposing additional tax, a late filing penalty, a demand penalty and a filing enforcement fee, plus interest, for the 2017 tax year.
2. Appellants untimely filed their joint 2017 California income tax return on April 15, 2020. FTB accepted the return as filed and reduced the late filing penalty to \$778 and the demand penalty to \$778. Appellants then remitted payment in full for the 2017 tax year.
3. Appellants untimely filed their joint 2018 California income tax return on November 15, 2019. Appellants did not remit payment with the return, and FTB began collection, imposing a collection cost recovery fee of \$317. Appellants then remitted payment in full for the 2018 tax year.
4. Appellants filed an amended 2018 income tax return, reporting a tax due and a self-assessed estimate tax penalty. FTB accepted the amended return as filed and imposed a late filing penalty of \$14,371 and reduced the estimate tax penalty to \$106.
5. Appellants timely filed claims for refund for the 2017 and 2018 tax years, asserting that they received an inheritance that resulted in a significant increase in income for that period and that appellant-wife suffered a medical condition that affected her from 2018 into 2019.
6. FTB denied appellants' claims for refund.
7. Appellants then filed this timely appeal.

DISCUSSION

Issue 1: Whether appellants have established reasonable cause to abate the late filing penalties imposed for the 2017 and 2018 tax years.

FTB imposes a late filing penalty when a taxpayer does not timely file a return, unless it is shown that the failure to timely file was due to reasonable cause and not due to willful neglect. (R&TC, § 19131(a).) When FTB imposes a penalty, the law presumes that it is correct. (*Appeal of Xie*, 2018-OTA-076P.) A taxpayer has the burden of establishing reasonable cause. (*Appeal*

of Friedman, 2018-OTA-077P.) To establish reasonable cause, a taxpayer must show that the failure to file a timely return occurred despite the exercise of ordinary business care and prudence, or that cause existed as would prompt an ordinarily intelligent and prudent businessperson to have so acted under similar circumstances. (*Appeal of GEF Operating Inc.*, 2020-OTA-057P.) The applicable standard of proof is by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(c).)

Here, appellants' 2017 return was due April 15, 2018. Appellants filed their 2017 return on April 15, 2020, 2 years late. Appellants' 2018 return was due April 15, 2019. Appellants filed their 2018 return on November 15, 2019, 7 months late. Therefore, the late filing penalties were correctly imposed.

Appellants argue that reasonable cause exists to abate the late filing penalties because appellant-wife was suffering from a medical condition that consumed her life and impaired her ability to function. Appellants add that they needed to move to southern California due to appellant-wife's medical conditions, but their mail was still going to their former address, and as a result, they were not made aware of their 2017 and 2018 tax liabilities until late 2019. Appellants also state that they believed their financial adviser at the time was making quarterly tax payments on their behalf to account for the inheritance income they received.

Unfortunately, appellants have not provided evidentiary support regarding these arguments. A taxpayer must provide credible and competent evidence supporting a claim of reasonable cause to overcome this presumption of correctness. (*Appeal of Xie, supra.*) Appellants have not provided documentation to reflect when they received their inheritance, what they told their financial adviser, or what qualifications the financial adviser had to calculate their tax liability and file their returns. Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Porreca*, 2018-OTA-095P). Furthermore, reliance on a tax preparer to file returns is not reasonable cause under the law, as appellants have a non-delegable obligation to ensure their returns were timely filed and paid on the due date. (*U.S. v. Boyle* (1985) 469 U.S. 241, 251.) Additionally, had appellants thought their financial advisor was making payments on their behalf, reasonably prudent taxpayers exercising due care and diligence would have monitored their bank account to ascertain whether a scheduled electronic payment from their account to FTB was in fact paid. (*Appeal of Scanlon*, 2018-OTA-075P.) Therefore, appellants have not shown reasonable cause to abate the late filing penalties.

Additionally, appellants have not supported their contention that they did not receive the 2017 and 2018 notices. Here, the 2017 NPA was sent to the address that appeared on appellants' last return filed with FTB. Any notice shall be sufficient if it is mailed to a taxpayer's last-known address. (R&TC, § 18416(b).) It is well settled that FTB's mailing of a notice to the taxpayer's last-known address is considered sufficient notification even if the notice never actually reaches the taxpayer. (*Appeal of Yvonne M. Goodwin* (97-SBE-003) 1997 WL 258474.) This can be rebutted if the taxpayer has provided to FTB clear and concise written or electronic notification of a different address, or FTB has an address it has reason to believe is the most current address for the taxpayer. (R&TC, § 18416(c).) However, appellants have not shown that they provided notice to FTB of a different address or that FTB had a reason to believe their last known address was not the current address for them prior mailing the NPA. Therefore, this is not sufficient to show reasonable cause to abate the late filing penalties.

Lastly, appellants have not provided any support to establish the severity or timeframe for appellant-wife's illness. Illness or other personal difficulties may be considered reasonable cause if the taxpayers present credible and competent proof that they were continuously prevented from filing a tax return. (*Appeal of Head and Feliciano*, 2020-OTA-127P.) When taxpayers allege reasonable cause based on an incapacity due to illness or the illness of an immediate family member, the duration of the incapacity must approximate that of the tax obligation deadline. (*Ibid.*) Appellants have not provided medical records to show that appellant-wife suffered from any health conditions that caused her to be unable to timely file tax returns. Furthermore, appellants provide no evidence to show that appellant-husband was unable to file the return in the absence of appellant-wife's inability to timely file. Appellants provide no evidence of steps taken to timely file their return or that they were prevented from filing their return despite the exercise of ordinary business care and prudence. Therefore, appellants have not established reasonable cause for the late filing of the return and the late filing penalty may not be abated.

Issue 2: Whether appellants have established reasonable cause to abate the demand penalty imposed for the 2017 tax year.

R&TC section 19133 imposes a penalty when a taxpayer fails to file a return or provide information upon FTB's notice and demand to do so, unless the failure is due to reasonable cause and not willful neglect. (*Appeal of Jones*, 2021-OTA-144P.) FTB will only impose a demand

penalty if: (1) the taxpayer fails to respond to a current Demand and (2) at any time during the preceding four tax years, FTB issued an NPA following the taxpayer's failure to timely respond to a Request for Tax Return or a Demand. (Cal. Code Regs., tit. 18, § 19133(b).) Both conditions have been met, as appellants did not file a 2017 tax return or otherwise respond to the 2017 Demand and FTB has shown it issued a Request for Tax Return and NPA to appellant-wife for the 2015 tax year.

Appellants provide the same reasonable cause arguments to abate the demand penalty as for the late filing penalties, namely, appellant-wife's illness, the address change, and the reliance on the financial advisor. However, as discussed above, appellants have not provided credible and competent evidence supporting their claim of reasonable cause to overcome FTB's presumption of correctness as required by law. (*Appeal of Xie, supra.*) Therefore, no grounds have been established to abate the demand penalty for the 2017 tax year.

Issue 3: Whether appellants have established a basis to abate the estimate tax penalty for the 2018 tax year.

Internal Revenue Code (IRC) section 6654 imposes an addition to tax, which is treated as and often referred to as a penalty, where taxpayers fail to timely pay estimated tax. Subject to certain exceptions not relevant to the issues on appeal, R&TC section 19136 incorporates IRC section 6654. The estimate tax penalty is similar to an interest charge in that it is calculated by applying the applicable interest rate to the underpaid estimated tax. (See IRC, § 6654(a) [calculating the estimate tax penalty by reference to the interest rate imposed on underpayments in IRC section 6621]; R&TC, § 19136(b) [referring to R&TC section 19521 which, with modification, conforms to the federal interest provisions in IRC section 6621]; *Appeal of Johnson*, 2018-OTA-119P.)

Appellants do not contest the imposition or computation of the estimate tax penalty. Instead, appellants present only reasonable cause type arguments for the late payment penalty, demand penalty and the estimate tax penalty. However, there is no provision in the IRC or R&TC that allows the estimate tax penalty to be abated based solely on a finding of reasonable cause. (*Appeal of Saltzman*, 2019-OTA-070P.) As a result, there is no general reasonable cause exception to the imposition of the estimate tax penalty, and the estimate tax penalty imposed under IRC section 6654 is mandatory unless taxpayers establish that a statutory exception

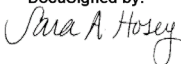
applies.³ (*Appeal of Saltzman, supra; Appeal of Scanlon, 2018-OTA-075P.*) Because appellants only provide reasonable cause type arguments for the abatement of the estimate tax penalty, appellants have alleged no basis upon which OTA may waive or abate the estimate tax penalty.

HOLDINGS


1. Appellants have not established reasonable cause to abate the late filing penalties imposed for the 2017 and 2018 tax years.
2. Appellants have not established reasonable cause to abate the demand penalty imposed for the 2017 tax year.
3. Appellants have not established a basis to abate the estimate tax penalty for the 2018 tax year.


DISPOSITION

FTB's action is sustained in full.

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Sara A. Hosey
Administrative Law Judge

We concur:

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Asaf Kletter
Administrative Law Judge

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Natasha Ralston
Administrative Law Judge

Date Issued: 9/8/2022

³ Although there is no provision allowing for the abatement of the estimate tax penalty based solely on reasonable cause, IRC section 6654(e)(3) provides that FTB may waive the addition to tax if it determines either that: (1) “by reason of casualty, disaster, or other unusual circumstances the imposition of such addition to tax would be against equity and good conscience,” or (2) the failure to timely pay the estimate tax payment was due to reasonable cause, *and* the taxpayer retired after reaching age 62 or became disabled in the taxable year for which the estimated payments were required to be made or in the previous year. Appellants have not alleged that either of these exceptions apply; therefore, this Opinion will not discuss them further.