

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 21088530
B. ROTHSCHILD)
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OPINION

Representing the Parties:

For Appellant: Richard Kaufman, CPA

For Respondent: Christopher M. Cook, Tax Counsel III

For Office of Tax Appeals: Michelle Huh, Tax Counsel

K. GAST, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, B. Rothschild (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$4,656.01, plus applicable interest, for the 2019 tax year.¹

Appellant elected to have this appeal determined pursuant to the procedures of the Small Case Program. Those procedures require the assignment of a single administrative law judge. (Cal. Code Regs., tit. 18, § 30209.1.) Appellant waived the right to an oral hearing; therefore, the matter is decided based on the written record.

ISSUES

1. Whether appellant has established reasonable cause to abate the late-payment penalty.
2. Whether appellant has established a basis to abate the estimated tax penalty.

FACTUAL FINDINGS

1. On June 15, 2018, appellant made an estimated tax payment for the 2018 tax year, but submitted the payment to a related trust account instead of his own 2018 personal tax

¹ This refund consists of a late-payment penalty of \$2,747.01 and an estimated tax penalty of \$1,909.00.

- account with FTB. FTB subsequently refunded this payment, plus interest, to the trust on April 24, 2019.
2. On June 12, 2019, after appellant timely filed his 2018 California resident income tax return, FTB issued a Notice of Tax Return Change – Revised Balance (Notice) for that tax year. In the Notice, FTB informed appellant that based on its records, it decreased the amount of estimated tax payments shown on his 2018 tax return. Consequently, appellant owed additional tax, plus interest and an estimated tax penalty.
 3. On April 9, 2019, and June 17, 2019, appellant remitted undesignated payments of \$16,628 and \$22,920, respectively, which FTB applied to the 2018 tax year. Then, on July 22, 2019, FTB issued a refund of \$18,476.36 for that same tax year.
 4. On September 14, 2020, after appellant timely filed his 2019 California resident income tax return, FTB issued a Notice for that tax year. In the Notice, FTB informed appellant that based on its records, it decreased the amount of estimated tax payments shown on his 2019 tax return. Consequently, appellant owed, as relevant here, a late-payment penalty and an estimated tax penalty, plus interest. The Notice requested payment of the balance due by September 29, 2020.
 5. Appellant paid the balance due as shown on the Notice on October 27, 2020.
 6. Then, on November 6, 2020, FTB issued an Income Tax Due Notice increasing the late-payment penalty and applicable interest. In response, appellant timely remitted another payment on November 11, 2020, that fully satisfied the balance due for the 2019 tax year.
 7. Appellant filed a claim for refund for the 2019 tax year for the late-payment and estimated tax penalties. In his claim, appellant asserted the estimated tax payments of \$16,628 and \$22,920 were for the 2019 tax year, but FTB instead arbitrarily applied them to the 2018 tax year. Appellant further asserted he is 88 years old, with certain memory problems that may have contributed to the matter.
 8. FTB denied appellant's refund claim, and this timely appeal followed.

DISCUSSION

Issue 1: Whether appellant has established reasonable cause to abate 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 on or before the date prescribed for payment of the tax.

Appellant does not dispute the computation of the late-payment penalty, but argues there is reasonable cause to abate it.

The penalty may be abated if the taxpayer shows that the failure to make a timely payment of tax was due to reasonable cause and not due to willful neglect. (R&TC, § 19132(a)(1).) To establish reasonable cause for the late payment of tax, the taxpayer must show 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.*) Illness or other personal difficulties may establish reasonable cause if the taxpayer presents credible and competent proof that the circumstances surrounding the illness prevented the taxpayer from complying with the law. (*Appeal of Triple Crown Baseball LLC*, 2019-OTA-025P.) Unsupported assertions are insufficient to satisfy a taxpayer’s burden of proof. (*Appeal of Moren, supra.*)

Appellant asserts he is 88 years old and, due to his age and medical condition, made an error when he submitted his 2018 estimated tax payment to a related trust account rather than his 2018 personal tax account.² Appellant further asserts that he suffered from failing memory starting in 2015 and obtained treatment for his medical condition from time to time. As support, appellant provides several documents: a copy of two letters he wrote to his accountant—one dated October 27, 2020, and the other August 23, 2021—in which he explains his memory problem began a few years ago and he has experienced other medical issues; a copy of a refund check from FTB issued to a related trust; copies of appellant’s medical visit summary from 2021 stating appellant has a “stable right frontal and right temporal meningiomas,” “mild cerebral atrophy,” and a “history of angioma and memory problems”; and copies of appellant’s medical visit summary in 2018 and 2019 stating appellant has a “history of meningioma.”

However, appellant’s evidence does not show his medical condition hindered his ability to make timely payments to the proper tax accounts, and the medical visit summary he submits does not indicate the extent of his inability to handle financial matters. Indeed, the record reflects that despite his medical condition, appellant was able to make tax payments to FTB in

² This, in turn, caused FTB to apply what appellant believed were 2019 tax year estimated tax payments to the liabilities he owed for the 2018 tax year, thus triggering an understatement of tax due and a late-payment penalty and estimated tax penalty for the 2019 tax year.

2019 and 2020.³ For example, appellant made several tax payments from January 2019, through June 2019, even though FTB applied some of them to the 2018 tax year. In addition, when FTB notified appellant of the revised balance due for the 2019 tax year on September 14, 2020, and that payment was due by September 29, 2020, he paid (albeit untimely) about a month later, on October 27, 2020. FTB notified him again of an additional balance due for that same tax year on November 6, 2020, and appellant timely responded by remitting payment in full satisfaction of the amount due just a few days later, on November 11, 2020. Thus, although appellant experienced memory problems during the time his 2019 taxes became due, he was still aware he owed taxes for 2019 and he has not shown his medical condition prevented him from timely complying.

As noted above, appellant also asserts FTB misapplied estimated tax payments that he intended to be for the 2019 tax year by instead applying them to the 2018 tax year. This, appellant maintains, created a shortfall of tax paid on the 2019 tax return and resulted in the assessment of penalties and interest for that tax year. As support, appellant provides a summary of transactions causing the penalties and a copy of his handwritten accounting for the 2018 and 2019 tax years.

However, appellant has not provided any evidence, such as copies of canceled checks or cashier checks, showing the estimated tax payments in question of \$16,628 and \$22,920 that FTB applied to the 2018 tax year were specifically designated as estimated tax payments for the 2019 tax year. Moreover, appellant should have noticed there was an error in his intended 2019 estimated tax payments when FTB applied them to his 2018 tax year and he received a refund from FTB of \$18,476.36 on July 22, 2019. Appellant had adequate time to contact FTB and rectify the issue of the 2019 estimated tax payments prior to filing his 2019 tax return but he did not. (See *Appeal of Friedman*, 2018-OTA-077P [an oversight or error, by itself, does not constitute reasonable cause for the abatement of the late-payment penalty].) Accordingly, appellant has not established reasonable cause to abate the late-payment penalty.

³ Appellant was also able to timely file his 2018 tax return (due in 2019) and his 2019 tax return (due in 2020).

Issue 2: Whether appellant has established a basis to abate the estimated tax penalty.

Except as otherwise provided, R&TC section 19136 conforms to Internal Revenue Code (IRC) section 6654 and imposes a penalty for the underpayment of estimated tax where a taxpayer's installment tax payments are less than the amounts due at the end of the installment periods. Here, appellant makes the same reasonable cause arguments as he does above. However, there is no provision in the IRC or R&TC that allows the estimated tax penalty to be abated based solely on a finding of reasonable cause. (*Appeal of Saltzman*, 2019-OTA-070P.)⁴

HOLDINGS

1. Appellant has not established reasonable cause to abate the late-payment penalty.
2. Appellant has not established a basis to abate the estimated tax penalty.

DISPOSITION

FTB's action is sustained.

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Kenneth Gast
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Kenneth Gast
Administrative Law Judge

Date Issued: 6/2/2022

⁴ It is further noted the taxing agency may waive the estimated tax penalty if it determines that (i) during the applicable tax year or the preceding year, the taxpayer either retired after having attained age 62 or became disabled, and (ii) the underpayment was due to "reasonable cause" and not due to willful neglect. (IRC, § 6654(e)(3)(B)(i)-(ii).) Appellant does not specifically allege his medical condition rendered him disabled and even if it did, as discussed above, he has not established the factual circumstances surrounding his condition meets the reasonable cause standard. In addition, IRC section 6654(e)(3) provides another statutory exception to the estimated tax penalty if the taxing agency "determines that by reason of casualty, disaster, or other unusual circumstances the imposition of [the estimated tax penalty] would be against equity and good conscience." Here, there is no evidence or argument this provision is applicable.