

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:

C. CHOI AND
S. CHOI

) OTA Case No. 22029819
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OPINION

Representing the Parties:

For Appellants: C. Choi

For Respondent: Eric R. Brown, Tax Counsel III

K. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, C. Choi and S. Choi (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$3,214.84.17 for the 2020 tax year.

Appellants 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.) 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 for the late payment of tax such that the late payment penalty should be abated.
2. Whether appellants have established a basis for the abatement of the underpayment of estimated tax penalty (estimated tax penalty).

FACTUAL FINDINGS

1. Appellants timely filed a joint 2020 California income tax return. The return reported estimated payments of \$37,336, withholding credits of \$2,596, and tax due of \$1,740. Appellants also made voluntary contributions of \$1,000. In total, appellants reported amounts due of \$2,740 (\$1,740 + \$1,000), which they paid upon filing the return.
2. On July 12, 2021, FTB issued a Notice of Tax Return Change-Revised Balance reducing appellants' estimated tax payments of \$37,336.00 and voluntary contributions of \$1,000.00 to zero. FTB also imposed a late payment penalty and an estimated tax penalty. Subsequently, FTB issued an Income Tax Due Notice reflecting total penalties of \$3,214.84.
3. Appellants made payments of \$36,336.00 on August 2, 2021, and \$3,464.11 on September 3, 2021, satisfying the liability.
4. On November 24, 2021, appellants filed a timely claim for refund of \$3,209.17, requesting relief from the penalties based on a claim of reasonable cause.¹
5. On January 26, 2022, FTB denied appellants' claim for refund. This appeal followed.

DISCUSSION

Issue 1: Whether appellants have established reasonable cause for the late payment of tax such that the late payment penalty should be abated.

Generally, taxpayers are required to pay tax by the due date of their tax return (without regard to any extension of time for filing the return). (R&TC, § 19001.) If taxpayers fail to pay the amount shown as due on the return on or before the due date of the return, then a late payment penalty is imposed unless the failure to make a timely payment of tax was due to reasonable cause and not due to willful neglect. (R&TC, § 19132(a).)

To establish reasonable cause for the late payment of tax, taxpayers must show that their failure to make a timely payment of the proper amount of tax occurred despite the exercise of ordinary business care and prudence. (*Appeal of Friedman*, 2018-OTA-077P.) Taxpayers bear

¹ Appellants' claim for refund also included a request for interest relief. OTA notes that the imposition of interest is mandatory, and it can only be abated in certain limited situations when authorized by law. (R&TC, § 19101(a); *Appeal of Balch*, 2018-OTA-159P.) There is no reasonable cause exception to the imposition of interest. (*Appeal of Summit Hosting LLC*, 2021-OTA-216P.) On appeal, appellants continue to request interest abatement. However, appellants do not raise any arguments other than those related to reasonable cause for their failure to timely pay the tax. Thus, appellants have not shown that they are entitled to interest relief.

the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Ibid.*) Taxpayers may establish reasonable cause due to illness if they present credible and competent proof that the circumstances of the illness prevented them from complying with the law. (See *Appeal of Belcher*, 2021-OTA-284P.) Unsupported assertions are not sufficient to satisfy taxpayers' burden of proof. (*Appeal of Scanlon*, 2018-OTA-075P.)

Here, there is no dispute that appellants failed to make timely payments of tax for the 2020 tax year. Appellants also do not dispute the calculation of the penalty. Thus, FTB properly imposed the late payment penalty. Nevertheless, appellants assert that there is reasonable cause for their late payment. Appellants assert that they scheduled estimated payments of tax, but FTB did not process the payments. Appellants also argue that they made similarly scheduled payments in 2019 and 2021, and that FTB's failure to take payment is inexplicable. However, appellants have not provided any evidence to show that they made payments, which were rejected by FTB. Appellants' unsupported assertions are not sufficient to satisfy their burden of proof. (*Appeal of Scanlon, supra.*) Further, a lack of notice from FTB of a failed payment does not negate appellants' duty of prudence and due care to verify that their scheduled payments were successful. (*Ibid.*)

Regarding verification of payment, appellants argue that they could not monitor their bank accounts as they pursued out-of-state treatment for a life-threatening illness. However, appellants also assert that they returned to California in 2020 (before the tax liability was due). Thus, appellants could have recognized their error and made payment prior to the April 15, 2021 due date. Appellants' failure to check their bank account balance does not demonstrate due diligence, as would be exercised by an ordinarily intelligent and prudent businessperson. Appellants also have not provided any evidence that the illness continually prevented them from making timely payments of the tax liability. Therefore, appellants have not shown that there was reasonable cause for their failure to timely pay the tax and the late payment penalty may not be abated.

Issue 2: Whether appellants have established a basis for the abatement of the estimated tax penalty.

Subject to certain exceptions not relevant to the issues on appeal, R&TC section 19136 incorporates Internal Revenue Code (IRC) section 6654 but modifies the due dates and amounts for payment of estimated taxes. 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. The estimated tax penalty is similar to an interest charge in that it is calculated by applying the applicable interest rate to the underpaid estimated tax. (*Appeal of Johnson*, 2018-OTA-119P.)

Appellants do not contest the imposition or computation of the estimated tax penalty. Instead, appellants present only the reasonable cause type arguments discussed with respect to the late-payment penalty. 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.) As a result, there is no general reasonable cause exception to the imposition of the estimated tax penalty, and the estimated tax penalty imposed under IRC section 6654 is mandatory unless taxpayers establish that a statutory exception applies.² (*Appeal of Saltzman, supra*; *Appeal of Scanlon, supra*.) Because appellants only provide reasonable cause type arguments for the abatement of the estimated tax penalty, appellants have alleged no basis upon which OTA may waive or abate the estimated tax penalty.


² Although there is no provision allowing for the abatement of the estimated 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 estimated 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.

HOLDINGS

1. Appellants have not established reasonable cause for the late payment of tax such that the late payment penalty should be abated.
2. Appellants have not established a basis for the abatement of the estimated tax penalty.

DISPOSITION

FTB's denial of appellants' claim for refund for the 2020 tax year is sustained.

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Keith T. Long
Administrative Law Judge

Date Issued: 10/5/2022