

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 220310062
P. JONES AND)
A. JONES)
_____)

OPINION

Representing the Parties:

For Appellants: A. Jones

For Respondent: Topher Tuttle, Tax Counsel III

R. TAY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, P. Jones and A. Jones (appellants) appeal an action by the Franchise Tax Board (respondent) denying appellants’ claim for refund of \$2,569.53 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 Office of Tax Appeals (OTA) decides the matter based on the written record.

ISSUES

1. Whether appellants have shown error in respondent’s denial of appellants’ claim for refund of the late payment penalty.
2. Whether appellants have shown error in respondent’s denial of appellants’ claim for refund of the estimated tax penalty.

FACTUAL FINDINGS

1. Appellants filed a timely 2020 California income tax return.
2. Respondent accepted the return, but later discovered that appellants overreported their estimated tax payments. Respondent’s records show that appellants only made estimated

- tax payments of \$85,000. Consequently, appellants did not pay their entire tax liability before the due date.¹
3. On September 7, 2021, respondent issued a Notice of Tax Return Change – Revised Balance (Notice) and imposed the late payment penalty in the amount of \$1,148.49, the estimated tax penalty in the amount of \$1,339.00, and applicable interest. The remaining balance, which included amounts for additional tax and interest, totaled \$19,047.69, with a payment deadline of September 22, 2021.
 4. Appellants submitted a payment of \$19,100 on September 20, 2021, which respondent received, but did not apply to appellants’ outstanding balance.
 5. Respondent initiated collection action because the payment remained unapplied. On November 29, 2021, appellant-wife alerted respondent of appellants’ payment. After respondent applied appellants’ payment, respondent advised appellants that an additional \$48.86 remained outstanding, which appellants paid on the same day.
 6. According to respondent’s records, respondent calculated the late payment penalty based on an effective date of October 15, 2021, for a late payment penalty of \$1,230.53.
 7. On appeal, respondent concedes \$101.17 of overcharged interest based on respondent receiving overpayments on September 20, 2021, and November 29, 2021.

DISCUSSION

Issue 1: Whether appellants have shown error in respondent’s 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. 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.) Here, it is uncontroverted that appellants did not timely pay their tax due for the 2020 tax year. Consequently, respondent properly imposed the late payment penalty.

The late payment penalty may be abated, however, if a taxpayer shows that the failure to make a timely payment of tax was due to reasonable cause and not due to willful neglect.

¹ Respondent postponed the filing and payment deadline for the 2020 tax year to May 17, 2021, due to the COVID-19 pandemic.

(R&TC, § 19132(a)(1).) Appellants do not make a reasonable cause argument, and we find no evidence of reasonable cause in the record. Rather, appellants argue that they have always paid their taxes on time, and that they suffered a loss of income and other hardships during the COVID-19 pandemic, and thus, assessing penalties and interest is “unjustified.” Appellants deserve sympathy for their situation; however, we find no authority under the law to grant penalty abatement under these circumstances.

Unlike federal law, California law does not include a provision that allows abatement of the late payment penalty for the 2020 tax year based on a taxpayer’s good filing and payment history. Additionally, appellants have not demonstrated financial hardship that would justify a reasonable cause finding. (See *Appeal of Triple Crown Baseball LLC*, 2019-OTA-025P.) Appellants have also not specifically stated how the hardships they experienced due to the COVID-19 pandemic prevented them from making a timely tax payment. Lastly, OTA is required to enforce deadlines, even when the result is harsh. Although the result of fixed deadlines may appear harsh, the occasional harshness is redeemed by the clarity imparted. (*Prussner v. U.S.* (7th Cir. 1990) 896 F.2d 218, 222-223.)

There is some confusion in the record as to the proper amount of the late payment penalty.² There is a discrepancy between respondent’s Notice and respondent’s assessment as shown on the 2020 Current Values Display provided on appeal. Appellants made a timely payment in response to the Notice, and thus, to the extent respondent assessed more than the \$1,148 for the late payment penalty, respondent’s assessment is erroneous.

Issue 2: Whether appellants have shown error in respondent’s imposition of the estimated tax penalty.

California generally conforms to Internal Revenue Code (IRC) section 6654 by imposing an estimated tax penalty for the failure to make timely estimated income tax payments. (R&TC, § 19136(a).) The estimated tax penalty is similar to an interest charge, and it applies from the due date of the estimated tax payment until the date it is paid or April 15 of the following year, whichever comes first. (IRC, § 6654(b)(2); *Appeal of Johnson*, 2018-OTA-119P.) There is no general reasonable cause exception for the estimated tax penalty. (*Appeal of Johnson, supra.*)

² Respondent’s printout of the 2020 Tax Year Current Values Display shows \$1,230.53 for the late payment tax penalty and the Notice shows \$1,148.00 for the late payment penalty.

There are only two situations where the estimated tax penalty may be waived. The first situation applies only where the underpayment of estimated taxes was caused by a casualty, disaster, or other unusual circumstances, such that imposition of the penalty would be against equity and good conscience. (IRC, § 6654(e)(3)(A).) The second situation applies only to newly retired or disabled individuals: the penalty may be waived if the taxpayer either retired after reaching the age of 62 or became disabled during the relevant tax year, but only if the underpayment of estimated taxes was due to reasonable cause and not willful neglect. (IRC, § 6654(e)(3)(B).) The taxpayer bears the burden of proving that waiver of the penalty is warranted. (*Appeal of Saltzman*, 2019-OTA-070P.)

Appellants make no separate argument for abatement of the estimated tax penalty. Rather, appellants cite the same arguments they made for abatement of the late payment penalty. Although appellants argue that their late estimated tax payments should be excused because of the COVID-19 pandemic, appellants do not specifically state how the pandemic impacted them such that they were unable to make timely estimated tax payments. The law does not allow for abatement of the estimated tax penalty for any of appellants' other arguments. Thus, appellants have not shown that they are entitled to abatement of the estimated tax penalty.

HOLDINGS

1. Appellants have not shown error in respondent’s denial of appellants’ claim for refund of \$1,148 for the late payment penalty for the 2020 tax year. Appellants have shown that any amount of late payment penalty assessed in excess of that amount is erroneous.
2. Appellants have not shown error in respondent’s denial of appellants’ claim for refund of the estimated tax penalty for the 2020 tax year.

DISPOSITION

Respondent’s action is reversed to the extent respondent erroneously assessed the late payment penalty, if any, as stated above. Respondent also conceded \$101.17. Respondent’s action is otherwise sustained in full.

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Richard Tay
Administrative Law Judge

Date Issued: 12/22/2022