

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:

G. LUINENBURG AND
S. JACQUES

) OTA Case No. 220510301
)
)
)
)
)

OPINION

Representing the Parties:

For Appellants: G. Luinenburg

For Respondent: Leoangelo C. Cristobal, Tax Counsel

For Office of Tax Appeals: Casey Green, Tax Counsel III

S. HOSEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, G. Luinenburg and S. Jacques (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ two claims for refund totaling \$1,075, consisting of a late payment penalty of \$999 and an estimated tax penalty of \$76, plus applicable interest, 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 failing to make a timely payment of tax for the 2020 tax year.
2. Whether appellants have established a basis for the abatement of the underpayment of estimated tax penalty (estimated tax penalty).

FACTUAL FINDINGS

1. On October 15, 2021, appellants timely filed their 2020 California income tax return within the automatic extension period.¹ On the return, appellants reported \$1,603,167 in California taxable income, total tax of \$130,671, payments of \$117,351, unpaid tax of \$13,320, and a \$76 self-assessed underpayment of estimated tax penalty, for a total amount due of \$13,396. Appellants remitted payment of \$13,396 when they filed their return.
2. Since full payment was not received by May 17, 2021², FTB imposed a \$999 late payment penalty and a \$76 estimated tax penalty, pursuant to R&TC sections 19132 and 19136, respectively.
3. On November 5, 2021, FTB sent appellants a State Income Tax Balance Due Notice for \$1,169.34, notifying appellants that FTB imposed a late payment penalty and an estimated tax penalty, plus applicable interest.
4. On December 3, 2021, appellants paid the balance in full.
5. On January 15, 2022, appellants filed two claims for refund, one for the \$999 late payment penalty, and the second for the \$76 estimated tax penalty. By letters dated March 28, 2022, FTB denied both claims.
6. This timely appeal followed.

DISCUSSION

Issue 1: Whether appellants have established reasonable cause for failing to make a timely payment of tax for the 2020 tax year.

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.) Due to the COVID-19 pandemic, the payment

¹ The 2020 tax deadline was April 15, 2021; however, California law provides taxpayers an automatic 6-month extension to file their income tax returns. (R&TC, §§ 18566, 18567; Cal. Code Regs., tit. 18, § 18567.)

² While the law grants an automatic six-month extension of time to file, it generally does not allow an extension of time to pay; however, due to the COVID-19 pandemic, FTB granted special tax relief by postponing the original 2020 payment deadline of April 15, 2021, to May 17, 2021. Consequently, the effective deadlines for the 2020 tax year were as follows: payments were due by May 17, 2021, and returns were due by October 15, 2021.

due date for the 2020 tax year was postponed to May 17, 2021. Appellants did not remit payment until October 15, 2021; therefore, FTB properly imposed the late payment penalty.

The late payment penalty may be abated if appellants show 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 a late payment of tax, appellants must show that the failure to make a timely payment occurred despite the exercise of ordinary business care and prudence. (*Appeal of Scanlon*, 2018-OTA-075P.) Appellants bear the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Appeal of Triple Crown Baseball*, 2019-OTA-025P.)

Appellants contend that reasonable cause exists to abate the late payment penalty. Specifically, appellants argue that appellant-husband is a partner at a law firm and his Schedule K-1 partnership income was higher than projected. In addition, appellants contend they acted in good faith when they relied on internal income information from the partnership and the guidance of their tax preparer. Appellants argue that they did not receive their final 2020 K-1 until the “summer of 2021,” and that they paid the additional tax as soon as they discovered the discrepancy, and they assert that they have a long history of tax compliance.

Here, appellants owed \$130,671 on May 17, 2021, and although they had made \$117,351 in payments up to that point, they did not pay the remaining \$13,320 until October 15, 2021. When a taxpayer asserts that they did not have the information necessary to make a reasonably accurate estimate of their tax liability, they must show the efforts made to acquire that information from the source that held it, and that difficulties in obtaining the necessary information led to the delay in payment. (*Appeal of Moren*, 2019-OTA-176P.) The general rule that unsupported assertions are not sufficient to satisfy a taxpayer’s burden of proof applies here. (*Ibid.*) Accordingly, appellants’ assertion that they did not receive the Schedule K-1 until summer of 2021, and instead relied on internal income information from the partnership and the guidance of their tax preparer is not sufficient to show reasonable cause. Appellants have not provided any substantiation of what this internal information was, or why it was reasonable to rely on it, or their efforts made to retrieve the final Schedule K-1 or otherwise showing that accurate records were unobtainable as of May 17, 2021. (*Ibid.*)

Moreover, contrary to appellants’ argument that they paid the additional tax as soon as they discovered the discrepancy, appellants stated that they received their final Schedule K-1 in

the summer of 2021; however, they did not pay the additional amount due until October 15, 2021, which was five months past the deadline. Appellants have not shown that an ordinarily prudent businessperson would have acted similarly under the circumstances.

Furthermore, regarding appellants' history of tax compliance, the Office of Tax Appeals (OTA) notes that for the taxable year at issue, California did not have a first-time abatement program like the IRS administers. Beginning with taxable year 2022, California has adopted a first-time abatement program, by statute. (R&TC, § 19132.5.) However, the statute does not apply retroactively such that appellants' late payment penalty may be abated.

Based on the foregoing reasons, appellants have failed to show reasonable cause to abate the late payment penalty. Therefore, OTA finds that appellants failed to meet their burden of proving reasonable cause for failing to make a timely payment of tax for the 2020 tax year.

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

Internal Revenue Code (IRC) section 6654 imposes an addition to tax, which is treated and often referred to as a penalty, when an individual fails to pay timely estimated tax.³ For California purposes, estimated tax payments are due on April 15 of the current year (30 percent of the required annual payment), June 15 of the current year (40 percent of the required annual payment), and January 15 of the following year (30 percent of the required annual payment). (R&TC, § 19136.1.) 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. (*Appeal of Saltzman*, 2019-OTA-070P.)

There is no provision in the R&TC or IRC allowing the estimated tax penalty to be abated based solely on a finding of reasonable cause. (*Appeal of Saltzman, supra.*) As a result, there is no reasonable cause exception to the imposition of the estimated tax penalty, and the penalty is mandatory unless appellants establish a statutory exception applies. (*Ibid.*) One such exception provides the taxing agency may waive the estimated tax penalty if it determines “by reason of casualty, disaster, or other unusual circumstances the imposition of [the estimated tax penalty] would be against equity and good conscience.” (IRC, § 6654(e)(3)(A).)

Appellants self-assessed an estimated tax penalty of \$76 for the 2020 tax year.

³ Subject to several exceptions not relevant to this appeal, California incorporates IRC section 6654 at R&TC section 19136, meaning those relevant provisions of IRC section 6654 are California law.

Appellants seek abatement of the penalty and reiterate their previous arguments, and in addition here argue that they underpaid their estimated tax “due to a casualty, disaster, or other unusual circumstances related to the COVID-19 pandemic,” and contend that the pandemic impacted all aspects of life by creating uncertainties and challenges, including office shutdowns, staffing issues, and additional client work caused by pandemic-related legislation.

Here, the limited exception under IRC section 6654(e)(3)(A) is narrower than the exception for reasonable cause. Specifically, the casualty and disaster situations include, but are not limited to: the taxpayer’s books and records being destroyed by fire or other casualty; an estimated tax payment not made due to the death or serious illness of the taxpayer; the imposition of the penalty being inequitable due to an unforeseen tax offset or collection; or a Government action or inaction caused extreme difficulty in estimating the tax. Appellants have not provided evidence showing how the effects of the pandemic caused them to underpay their estimated taxes, and that imposing a \$76 estimated tax penalty here is against equity and good conscience. Appellants have therefore not established a basis warranting abatement of the estimated tax penalty.

HOLDINGS

1. Appellants have not established reasonable cause for failing to make a timely payment of tax for the 2020 tax year.
2. Appellants have not established a basis for the abatement of the estimated tax penalty.

DISPOSITION

FTB's action denying appellants' claims for refund is sustained.

DocuSigned by:
Sara A. Hosey
6D3FE4A0CA514E7...

Sara A. Hosey
Administrative Law Judge

Date Issued: 1/5/2023