

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 220410181  
W. SCOTT AND )  
J. SCOTT )  
\_\_\_\_\_ )

**OPINION**

Representing the Parties:

For Appellants: W. Scott and J. Scott

For Respondent: Joel M. Smith, Tax Counsel III

E. LAM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, W. Scott and J. Scott (appellants) appeal actions by respondent Franchise Tax Board (FTB) denying W. Scott’s claim for refund of \$ 7,740.43 and J. Scott’s claim for refund of \$7,656.40 for the 2020 tax year.

Appellants waived the right to an oral hearing; therefore, Office of Tax Appeals (OTA) decides the matter based on the written record.

**ISSUES**

1. Whether appellants have shown reasonable cause for the late payments of tax.
2. Whether appellants are entitled to abatement of the underpayment of estimated tax penalties (estimated tax penalties).

**FACTUAL FINDINGS**

1. During 2020 tax year, appellants sold their residence of 60 years, which resulted in a capital gain.
2. On July 15, 2021, W. Scott and J. Scott each timely filed a 2020 California Resident Income Tax Return, electing the married filing separately (MFS) status. On their MFS tax returns, W. Scott and J. Scott each reported \$95,000 of 2020 estimated tax and other payments on line 72.

3. However, FTB had no record that either W. Scott or J. Scott made such payments. As such, FTB issued separate Notices of Tax Change – Revised Balance to W. Scott and J. Scott, resulting in the imposition of late payment penalties, estimated tax penalties, and interest.<sup>1</sup>
4. On October 14, 2021, appellants paid their separate 2020 balances due, including tax, penalties, and applicable interest. Subsequently, appellants requested refunds of the penalties based on reasonable cause.
5. FTB denied appellants' claims for refund.
6. This timely appeal followed.

### DISCUSSION

#### Issue 1: Whether appellants have shown reasonable cause for the late payments of tax.

R&TC section 19132 imposes a late payment penalty when taxpayers fail to pay the amount of tax 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 (determined without regard to any extension of time for filing the return). (R&TC, § 19001.) Appellants do not dispute that their payments were late or that FTB properly calculated the late payment penalty amounts. Thus, the only issue is whether appellants have demonstrated reasonable cause for their failure to timely pay their required taxes in full.

The late payment penalty may be abated if the taxpayers show that the failure to make timely payments of tax was due to reasonable cause and was not due to willful neglect. (R&TC, § 19132(a)(1).) To establish reasonable cause for the late payment of tax, taxpayers must show that the failure to make timely payments of the proper amount of tax occurred despite the exercise of ordinary business care and prudence. (*Appeal of Friedman*, 2018-OTA-077P.) The taxpayers bear the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Ibid.*) To establish that the late payment of tax was not due to willful neglect, the taxpayers must prove the absence of a conscious,

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<sup>1</sup> The Notice of Tax Return Change – Revised Balance issued to W. Scott imposed a late payment penalty of \$5,188.24, an estimated tax penalty of \$1,754.00, and applicable interest. The Notice of Tax Return Change – Revised Balance issued to J. Scott imposed a late payment penalty of \$5,131.88, estimated tax penalty of \$1,735.00, and applicable interest.

intentional failure or reckless indifference in failing to make timely payments. (*Appeal of Triple Crown Baseball LLC*, 2019-OTA-025P.)

Appellants assert reasonable cause exists because: (1) the escrow company did not properly complete Form 593, resulting in no California withholding on the sale of real property; (2) the shutdowns due to COVID-19 complicated their ability to timely make estimated tax payments; (3) appellants' long time tax preparer sold her practice and the new tax preparer neglected their account and tax returns and misrepresented to appellants that an extension was filed; (4) the hospitalization of W. Scott prevented appellants from timely making estimated tax payments; and (5) appellants have been compliant in filing and paying California taxes for the past sixty plus years. However, none of appellants' assertions demonstrate reasonable cause for the late payment of tax.

As to the first reason, appellants' contention provides no explanation as to why or how the escrow company failed to properly complete Form 593, such as improperly certifying an exemption from withholding or improperly calculating appellants' withholding amounts. Here, appellants do not allege that the escrow company, through the erroneous Form 593, or otherwise, provided them with substantive tax advice. (See *U.S. v. Boyle* (1985) 469 U.S. 241, 252.) It is well established that each taxpayer has a personal, non-delegable obligation to file a tax return by the due date. (*Ibid.*) While the proceeds from the sale of real property were not withheld, appellants have the obligation to timely make payments directly themselves. As such, the first argument is unpersuasive and fails to demonstrate reasonable cause.

With respect to the second reason, appellants have not explained how COVID-19 complicated their ability to timely make the required tax payments for the 2020 tax year. Here, due to the COVID-19 pandemic, FTB provided relief by postponing the payment deadline for the 2020 tax year from April 15, 2021, to May 17, 2021.<sup>2</sup> Appellants have not explained why they were unable to timely pay by this postponed deadline. Additionally, appellants did not provide any evidence to show that they exercised ordinary business care and prudence in attempting to properly ensure that their 2020 tax obligations were timely. As such, the second argument is unpersuasive and fails to demonstrate reasonable cause.

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<sup>2</sup> See <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2021-03-state-tax-deadline-for-individuals-postponed-until-may-17-2021.html>.

In response to the third reason, appellants also have not clearly explained how the tax preparer neglected their account or tax returns. Additionally, while appellants state that the new tax preparer misinformed them that an extension was filed, this fact is irrelevant because FTB is imposing late payment penalties, not late filing penalties. Furthermore, an extension to file is not an extension to pay and taxes are generally due on the original due date of the return (April 15, 2021, which was postponed to May 17, 2021, due to the COVID-19 pandemic), determined without regard to any extension of time for filing the return. (Cal. Code Regs., tit. 18, § 18567(a); R&TC, § 19001.) Here, appellants' returns filed on July 15, 2021, are treated as timely filed and no extension request was required to be filed with FTB. (*Ibid.*) However, appellants' payments remained due on May 17, 2021 (as postponed), and appellants do not explain what steps, if any, they took to determine the amount and timely pay the taxes due by this date. As such, appellants failed to demonstrate reasonable cause.

As to the fourth reason, it is well established that reasonable cause for a failure to timely pay tax may exist if the taxpayers' illness prevents them from paying their tax, but not if the taxpayers are able to continue their own business affairs despite the illness or incapacity. (See *Appeal of Belcher*, 2021-OTA-284P.) Here, appellants do not explain when and for how long W. Scott was hospitalized and do not provide any evidence of W. Scott's hospitalization. Appellants also fail to explain why J. Scott was unable to assist with W. Scott's 2020 tax obligations during any period of time when W. Scott may have been hospitalized.

Finally, in response to appellants' last reason, for the 2020 tax year, FTB did not have a "First Time Abate" program which would permit it to abatement penalties based on the taxpayers' good filing and payment history. For the 2020 tax year, California law only permitted abatement of the late payment penalty on a showing of reasonable cause.<sup>3</sup>

For the reasons stated above, appellants have failed to demonstrate reasonable cause to abate the late payment penalties.

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<sup>3</sup> See R&TC, § 19132.5 [for tax years beginning on or after January 1, 2022, an individual taxpayer shall receive, under certain conditions, a one-time abatement of the late-payment penalty under R&TC section 19132].

Issue 2: Whether appellants are entitled to abatement of the estimated tax penalties.

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 timely pay estimated tax. (*Appeal of Johnson*, 2018-OTA-119P.) Subject to certain exceptions not relevant to the issue on appeal, R&TC section 19136 incorporates IRC section 6654. The estimated tax penalty is similar to an interest charge in that it is calculated by applying the applicable interest rate to the underpayment of estimated tax. (See IRC, § 6654(a).) There is no general reasonable cause exception to the imposition of the estimated tax penalty. (*Appeal of Johnson, supra.*) The estimated tax penalty is mandatory unless the taxpayers establish that a statutory exception applies. (*Ibid.*)

Appellants present the same reasonable cause arguments made with respect to the late payment penalties in their request for the abatement of the estimated tax penalties. However, unlike the late payment penalty, there is no authority to abate the estimated tax penalty based solely on reasonable cause.<sup>4</sup> Therefore, OTA need not discuss appellants' reasonable cause arguments as it relates to this penalty, and the estimated tax penalties cannot be abated.

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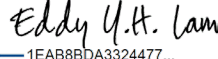
<sup>4</sup> There are a few limited exceptions to the penalty (see, e.g., IRC, § 6654(e)(3)(A) & (B)), but appellants do not raise any of them here and the evidence in the record does not establish that these exceptions are applicable here.

HOLDINGS

1. Appellants have not shown reasonable cause for the late payments of tax.
2. Appellants are not entitled to abatement of the estimated tax penalties.

DISPOSITION


FTB’s actions denying appellants’ claims for refund are sustained.

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Eddy Y.H. Lam  
 Administrative Law Judge

We concur:

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Richard Tay  
 Administrative Law Judge

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Cheryl L. Akin  
 Administrative Law Judge

Date Issued: 2/1/2023