

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: )  
A. AVAGYAN AND ) OTA Case No. 220510434  
K. OGANESYAN )  
\_\_\_\_\_ )

**OPINION**

Representing the Parties:

For Appellants: A. Avagyan

For Respondent: Paige Chang, Tax Counsel

V. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, A. Avagyan and K. Oganesyanyan (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$3,042.24 for the 2020 tax year.

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 to abate the late payment penalty.
- 2. Whether appellants have established a basis to abate the underpayment of estimated tax penalty (estimated tax penalty).
- 3. Whether appellants have established interest should be abated.

**FACTUAL FINDINGS**

- 1. In September of 2021, appellants filed their California Resident Income Tax Return for tax year 2020 and paid the tax due.
- 2. FTB subsequently issued a State Income Tax Balance Due Notice to appellants imposing late payment and estimated tax penalties totaling \$2,661.04, plus interest.

3. Appellants paid the balance due and made a claim for refund of the penalties and interest totaling \$3,038.24.
4. FTB issued a Notice of Action denying appellants' claim for refund. This timely appeal followed.

### DISCUSSION

#### Issue 1: Whether appellants have established reasonable cause to abate the late payment penalty.

California imposes a penalty when a taxpayer fails to pay the amount of tax shown on a return on or before the due date, unless it is due to reasonable cause and not willful neglect. (R&TC, § 19132(a)(1).) Tax is due on the original due date of the return without regard to the extension to file. (R&TC, §§ 18567(b), 19001; Cal. Code Regs., tit. 18, § 18567.) Returns for calendar year taxpayers are due on or before April 15th following the close of the calendar year. (R&TC, § 18566.) For the 2020 tax year, California postponed the individual tax payment deadline to May 17, 2021.<sup>1</sup>

To establish reasonable cause for the late payment penalty, the taxpayer must show that 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 Triple Crown Baseball LLC*, 2019-OTA-025P.) The standard is that an ordinarily intelligent and prudent businessperson would have acted similarly under the same circumstances. (*Ibid.*) General difficulties in computing a tax liability or determining taxable income with exactitude does not constitute reasonable cause. (*Appeal of Xie*, 2018-OTA-076P.)<sup>2</sup> Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Bracamonte*, 2021-OTA-156P.)

Appellants assert that they were unable to timely file their return and pay the tax due by the original due date because they were unable to compute the tax themselves, and their return preparer was unavailable until August of 2021. However, if appellants needed assistance computing their tax liability for the 2020 tax year and their current return preparer was not available to assist them until after the postponed payment deadline of May 17, 2021, an

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<sup>1</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>.

<sup>2</sup> Decisions analyzing whether taxpayers have established reasonable cause to abate the late filing penalty are persuasive authority for determining whether taxpayers have established reasonable cause to abate the late payment penalty because these issues ask the same questions and weigh the same evidence. (*Appeal of Triple Crown Baseball LLC*, *supra*.)

ordinarily intelligent and prudent business person would have sought advice from a different CPA or tax preparer who could assist them prior to this deadline. Appellants have not explained what steps, if any, they took to find a different CPA or tax preparer who could provide them with timely assistance.

Appellants also argue that they requested an extension to file their tax return, but they paid the tax due late because of difficulties in calculating their tax liability. However, an extension of time to file a tax return is not an extension of the time to pay. (See R&TC, § 18567(b).) Appellants have also not established what difficulties they encountered. General difficulties in computing a tax liability or determining taxable income with exactitude does not constitute reasonable cause. (See *Appeal of Xie, supra.*)

Additionally, appellants refer to their filing and payment history as support for a finding of reasonable cause for their failure to timely pay the tax due. Even assuming that appellants had a clean history of timely filing and payments prior to tax year 2020 (which appears to be the case), appellants' filing and payment history, alone, does not support a finding of reasonable cause. Unlike the IRS, for tax year 2020 California had not enacted legislation or otherwise instituted a means for abating penalties based solely on the taxpayer's prior good filing and payment history. Instead, the law provides that the California late payment penalty shall apply unless reasonable cause is shown. (R&TC, § 19132(a)(1); *Appeal of Xie, supra.*)

Therefore, appellants have not established reasonable cause to abate the late payment penalty.

Issue 2: Whether appellants have established a basis to abate 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. IRC section 6654 imposes an addition to tax, which is treated as a penalty, where an individual fails to timely pay estimated tax. The addition to tax is similar to an interest charge in that it is calculated applying the interest rate imposed on underpayments on the amount of the underpayment of estimated tax. (See IRC, § 6654(a); R&TC, § 19136(b); *Appeal of Saltzman, 2019-OTA-070P.*)

There is no general reasonable cause exception to the estimated tax penalty and the imposition of the estimated tax penalty is mandatory unless the taxpayer established that a statutory exception applies. (*Appeal of Saltzman, supra.*) The estimated tax penalty may be waived where the underpayment of tax was due to casualty, disaster, or other unusual

circumstances such that imposition of the penalty would be against equity and good conscience; or where the underpayment is due to reasonable cause and not willful neglect, if the taxpayer either retired after having attained age 62 or became disabled in the taxable year for which the estimated tax payments were required to be made or in the previous taxable year. (IRC, § 6654(e)(3).)

Here, appellants do not dispute the imposition of the estimated tax penalty. Instead, appellants argue the estimated tax penalty should be abated because they were unable to compute their tax liability without their return preparer, who was unavailable until August of 2021. However, there is no general reasonable cause exception to the estimated tax penalty and appellants have not established any of the statutory exceptions to the estimated tax penalty. (See *Appeal of Saltzman, supra.*)

Therefore, appellants have not established a basis to abate the estimated tax penalty.

Issue 3: Whether appellants have established interest should be abated.

Interest is not a penalty but is merely compensation for a taxpayer's use of money after it should have been paid to the state. (*Appeal of Gorin, 2020-OTA-018P.*) Appellants have not specifically disputed the imposition of interest, and instead assert that there is reasonable cause to abate the amount at issue because they were unable to determine their tax liability or file a return without the assistance of their return preparer, who was temporarily unavailable. However, there is no reasonable cause exception to the imposition of interest. (*Ibid.*)

Accordingly, appellants have not established that interest should be abated.

HOLDINGS

1. Appellants have not established reasonable cause to abate the late payment penalty.
2. Appellants have not established a basis to abate the estimated tax penalty.
3. Appellants have not established that interest should be abated.

DISPOSITION


FTB’s action is sustained in full.

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Veronica I. Long  
 Administrative Law Judge

We concur:

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Ovsep Akopchikyan  
 Administrative Law Judge

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Michael F. Geary  
 Administrative Law Judge

Date Issued: 3/8/2023