

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
S. CHAN

) OTA Case No. 220710956
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OPINION

Representing the Parties:

For Appellant: S. Chan

For Respondent: Alisa L. Pinarbasi, Tax Counsel

A. KLETTER, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, S. Chan (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$1,869.07¹ for the 2020 tax year.

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

ISSUES

1. Whether the penalty for underpayment of estimated tax (estimated tax penalty) can be waived or abated.
2. Whether the penalty for failure to electronically pay tax (e-pay penalty) can be abated.
3. Whether appellant is entitled to interest abatement.

FACTUAL FINDINGS

1. For the 2020 tax year, appellant timely remitted withholding and estimated tax payments totaling \$40,507.61 for his second quarter installment due July 15, 2020. On

¹ This amount consists of a \$1,328.00 underpayment of estimated tax penalty and a \$503.01 penalty for failure to electronically pay tax, plus interest. Although appellant’s payment by check for the 2017 tax year caused FTB to propose to assess the penalty for failure to electronically pay tax, the penalty is assessed for the most recent posted tax year at the time the check payment was made, i.e., the 2020 tax year. Thus, the only tax year at issue in this appeal is the 2020 tax year.

- December 30, 2020, several months later, appellant made an additional estimated tax payment of \$36,164.00 which was applied to his 2020 second quarter installment.
2. Appellant timely remitted \$6,911.10 in withholding for his fourth quarter installment due January 15, 2021.
 3. On May 13, 2021, appellant remitted an extension payment for the 2020 tax year.²
 4. Appellant timely filed his 2020 California Resident Income Tax Return (return) by the extended due date. Appellant's adjusted gross income (AGI) reported on his return exceeded \$1 million. Appellant's 2020 return showed a \$222,227 tax liability.
 5. FTB's records indicated that appellant had a balance due.³ Appellant's remaining tax liability was satisfied by FTB's transfer of funds from his 2019 tax year.
 6. Appellant was required to electronically pay tax since the 2015 tax year.
 7. On November 22, 2021, appellant paid \$50,301 by check for the 2017 tax year.
 8. FTB subsequently issued appellant a State Income Tax Balance Due Notice proposing to assess a \$1,328.00 estimated tax penalty, plus interest. FTB also subsequently issued appellant a State Income Tax Balance Due Notice notifying appellant that FTB imposed a one percent e-pay penalty of \$503.01, plus interest.
 9. Appellant requested abatement of the penalties (and interest) for reasonable cause. FTB denied the penalty waiver request.
 10. Appellant paid the amounts due. FTB reconsidered the penalty waiver request as a claim for refund. FTB denied the claim.
 11. This timely appeal followed.

DISCUSSION

Issue 1: Whether the estimated tax penalty can be waived or abated.

Except as otherwise provided, R&TC section 19136 conforms to Internal Revenue Code (IRC) section 6654 and imposes an addition to tax, which is treated as and often referred to as a

² On the same date, May 13, 2021, appellant made an estimated tax payment for the 2021 tax year.

³ It appears that in calculating his 2020 estimated tax payments, appellant counted his May 31, 2021 extension payment and his May 31, 2021 estimated tax payment for the 2021 tax year.

penalty, where taxpayers fail to timely pay estimated tax.⁴ 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. (See IRC, § 6654(a); R&TC, § 19136(b); *Appeal of Johnson*, 2018-OTA-119P.)

For the 2020 tax year, appellant's AGI exceeded \$1 million and therefore the required annual payment was 90 percent of the tax shown on the current year return. (R&TC, § 19136.3.) Appellant's tax liability shown on the 2020 tax return was \$222,227.00, and the required annual payment was therefore \$200,004.30. Here, appellant only timely remitted \$40,507.61 by his second quarter payment due date of July 15, 2020, where the required installment was \$80,001.72.⁵ On December 30, 2020, several months later, appellant paid an additional \$36,164.00, which was applied to the second quarter installment. Appellant did not make any fourth quarter estimated payments, but remitted \$6,911.10 in withholding, which was well short of the required installment of \$60,001.29.⁶ FTB therefore properly imposed an estimated tax penalty of \$1,328.00 on these underpayments.

Appellant does not contest the imposition or computation of the estimated tax penalty. Instead, appellant presents reasonable cause arguments for abatement of the estimated tax 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. (*Ibid.*; *Appeal of Scanlon*, 2018-OTA-075P.) IRC section 6654(e)(3)(A) provides that the taxing agency may

⁴ Where estimated tax payments are due, R&TC section 19136.1(a)(2) generally requires, for California income tax purposes, that the payments be made in installments on or prior to April 15 and June 15 of the applicable tax year, and January 15 of the subsequent tax year. For federal income tax purposes, an additional installment is also due by September 15 of the applicable tax year.

Due to the COVID-19 pandemic, FTB postponed the 2020 first and second quarter estimated tax payment deadline to July 15, 2020. (See *State Postpones Tax Deadlines until July 15 Due to the COVID-19 Pandemic*, March 18, 2020, available at: <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2020-3-state-postpones-tax-deadlines-until-july-15-due-to-the-covid-19-pandemic.html>.) The third and fourth quarter estimated tax payment deadlines were not postponed.

⁵ The second quarter estimated tax payment installment is generally 40 percent of the tax liability, here, \$80,001.72 [$\$200,004.30 \times 40 = \$80,001.72$]. (R&TC, § 19136.1(a)(2)(B).)

⁶ The fourth quarter estimated tax payment installment is generally 30 percent of the tax liability, here, \$60,001.29 [$\$200,004.30 \times 30 = \$60,001.29$]. (R&TC, § 19136.1(a)(2)(D).)

waive the estimated tax penalty if it determines that “by reason of casualty, disaster, or other unusual circumstances the imposition of [the estimated tax penalty] would be against equity and good conscience.”⁷ The exception for unusual circumstances is considerably narrower than reasonable cause. (*Appeal of Mazdyasni*, 2018-OTA-049P.)

The phrase “casualty, disaster, or other unusual circumstances” generally refers to unexpected events that cause a hardship or loss such that, due to the circumstances, it would be “against equity and good conscience” to impose the estimated tax penalty. (*Appeal of Saltzman, supra.*) Examples of circumstances that warrant waiver of the estimated tax penalty include: the taxpayer’s books and records were destroyed by fire or other casualty; an estimated tax payment was not made due to the death or serious illness of the taxpayer; imposition of the penalty would be inequitable because, for example, the taxpayer substantially overstated their tax liability on their return or because the taxpayer designated that an overpayment of prior year tax be credited against their estimated tax, but the overpayment is offset for either past-due child support or non-tax federal debt under IRC section 6402(c) or (d), and the taxpayer was not notified of the offset until after the estimated tax payment due date. (*Appeal of Mazdyasni, supra.*) The IRS has waived the estimated tax penalty in situations where a tax law change, disaster, required accounting method change, or Government action or inaction, caused extreme difficulty in estimating the tax. (*Ibid.*)

Several cases have considered whether unusual circumstances warranted waiver under IRC section 6654(e)(3)(B) of the estimated tax penalty. In *Farhoumand v. Commissioner* (2012) T.C. Memo, 2012-131, the tax court determined that stock market volatility was not an unusual circumstance justifying waiver of the estimated tax penalty. In *Appeal of Johnson, supra*, OTA held that unexpected real estate capital gains income from the sale of property was not an unusual circumstance justifying waiver of the estimated tax penalty. In *Appeal of Mazdyasni, supra*, and *Appeal of Saltzman, supra*, OTA held that neither difficulty in estimating partnership income, nor the unexpected receipt of partnership payment were unusual circumstances justifying waiver of the estimated tax penalty. Each one of these cases consistently held that the taxpayer’s good faith or that the taxpayer acted reasonably under the circumstances are not

⁷ IRC section 6654(e)(3)(B) provides that FTB may waive the tax where it determines that (i) during the tax year for which the estimated payments were required to be made, or the preceding year, the taxpayer either retired after having attained age 62, or became disabled, and (ii) the underpayment was due to reasonable cause and not willful neglect. Appellant has not alleged that this exception applies; therefore, this Opinion will not discuss the exception further.

relevant to waiver under IRC section 6654(e)(3)(B) that section does not permit abatement of the estimated tax penalty solely on the basis of reasonable case.

Here, appellant primarily argues that the impact of the COVID-19 pandemic constitutes an unusual circumstance that warrants waiver of the estimated tax penalty. Specifically, appellant asserts that his staff experienced COVID-19, he had difficulty hiring help, and he was unaware that the estimated tax payments were not made. Appellant provides no detail or documentation for these assertions. Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Porreca*, 2018-OTA-095P.)

Preliminarily, appellant's argument focuses on the failures of his tax advisor, but the reasonable cause standard at issue in *U.S. v. Boyle*⁸ is not the applicable standard for relief here. Further, as outlined above, the taxpayer's good faith or that the taxpayer acted reasonably under the circumstances, are not relevant to waiver under IRC section 6654(e)(3)(B). (*Appeal of Mazdyasni, supra*; *Appeal of Saltzman, supra*.) Appellant does not dispute his tax liability or that he knew that the payments were due. It takes no special skill set or talent to know that there are unambiguous due dates for filing and paying taxes. (*Appeal of Mazdyasni, supra*.)

Appellant further argues that changing guidance caused confusion in determining the payment deadlines. During the COVID-19 pandemic, FTB postponed the payment deadlines for the first and second quarter estimated tax payments to July 15, 2020. Appellant had sufficient time to calculate and pay his estimated tax payments but failed to make the payments. As described above, the estimated tax penalty is similar to an interest charge and compensates the government for the time value of the tax that is due but not paid until a later date. OTA does not consider imposing the estimated tax penalty to be inequitable under appellant's circumstances. Therefore, the estimated tax penalty may not be abated.

Issue 2: Whether the e-pay penalty can be abated.

R&TC section 19011.5(a) requires individual taxpayers to remit all payments electronically to FTB if they make an estimated tax or extension payment of more than \$20,000, or if they file an original tax return with a tax liability of over \$80,000, for any taxable year beginning on or after January 1, 2009 (e-pay requirement). An individual who has become subject to the e-pay requirement must continue to make all future payments electronically, unless

⁸ (1985) 469 U.S. 241.

the taxpayer either: (1) meets the requirements of R&TC section 19011.5(b) and makes an election to discontinue electronic payments, or (2) requests and receives a waiver of the e-pay requirement pursuant to R&TC section 19011.5(d). A one percent e-pay penalty is imposed if the e-pay requirement is not satisfied, unless the taxpayer shows that the failure to e-pay was the result of reasonable cause and was not due to willful neglect. (R&TC 19011.5(c); *Appeal of Porreca, supra.*)

Although R&TC section 19011.5 does not specify what circumstances will establish “reasonable cause” or a lack of “willful neglect,” OTA looks for guidance to case law interpreting the same terms which are used to describe the bases for relief of other penalties (e.g., the late-filing and late-payment penalties of R&TC sections 19131 and 19132, respectively). (*Appeal of Porreca, supra.*) To demonstrate reasonable cause in the context of late-filing penalties, the taxpayer must show that the failure to file timely returns occurred despite the exercise of ordinary business care and prudence. The taxpayer bears the burden of proving reasonable cause for abating a penalty. Unsupported assertions are insufficient to satisfy a taxpayer’s burden of proof. (*Ibid.*)

Ignorance of the law is not reasonable cause for failure to comply with statutory requirements. (*Appeal of Porreca, supra.*) A taxpayer does not exercise ordinary business care and prudence when the taxpayer fails to acquaint his or herself with the requirements of California tax law. Willful neglect is a conscious, intentional failure to do something that is required or to avoid doing something that is prohibited, or a reckless indifference to the requirement or prohibition. (*Ibid.*)

Appellant’s tax liability exceeded \$80,000 for the 2015 tax year and appellant has been subject to the e-pay requirement since the 2015 tax year. Appellant does not contend that he filed an election under R&TC section 19011.5(b), or that he requested and received a waiver under R&TC section 19011.5(d). Thus, OTA finds that the e-pay penalty was properly imposed.

Here, appellant requests a refund of the e-pay penalty for reasonable cause because on November 22, 2021, he paid \$50,301 by check for his 2017 tax year in the midst of the COVID-19 pandemic, and at that time, he personally did not know how to make an electronic payment. Appellant claims he contacted FTB for assistance but had difficulty obtaining help. Although the pandemic presented new challenges, appellant could have familiarized himself with

the e-pay process by researching how to do so on FTB's website.⁹ Appellant concedes he knew he had to make an electronic payment before paying by check but chose not to. Under these circumstances, while there is no evidence of willful neglect, there is also no showing of reasonable cause in accordance with the law as outlined above. Therefore, the e-pay penalty cannot be abated.

Issue 3: Whether appellant is entitled to interest abatement.

Interest must be assessed from the date a tax payment is due through the date that it is paid. (R&TC, § 19101.) Imposing interest is mandatory; it is not a penalty, but it is compensation for appellant's use of money after it should have been paid to the state. (*Appeal of Moy*, 2019-OTA-057P.) Generally, to obtain relief from interest, taxpayers must qualify under R&TC section 19104, 19112, or 21012.¹⁰ (*Ibid.*) Appellant does not allege that any of the three statutory provisions for interest abatement apply to the facts of this case, and OTA concludes based on the evidence in the record that none of these statutory provisions apply. Therefore, FTB properly imposed interest and OTA has no basis to abate it.

⁹ See <https://www.ftb.ca.gov/pay/mandatory-e-pay.html> [detailing electronic payment options].

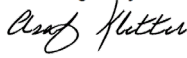
¹⁰ Under R&TC section 19104, FTB is authorized to abate or refund interest if there has been an unreasonable error or delay in the performance of a ministerial or managerial act by an FTB employee. Under R&TC section 19112, FTB may waive interest for any period for which FTB determines that an individual has extreme financial hardship. OTA does not have authority to review extreme financial hardship determinations. (See *Appeal of Moy, supra.*) Under R&TC section 21012, an individual may be relieved from interest if that person reasonably relies on written advice from FTB in response to a written request.

HOLDINGS

1. The estimated tax penalty cannot be waived or abated.
2. The e-pay penalty cannot be abated.
3. Appellant is not entitled to interest abatement.

DISPOSITION


FTB’s action is sustained.

DocuSigned by:

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 Asaf Kletter
 Administrative Law Judge

We concur:

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 Kenneth Gast
 Administrative Law Judge

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 Sheriene Anne Ridenour
 Administrative Law Judge

Date Issued: 2/23/2023