

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:

W. BREWER AND
J. BREWER (DEC'D)

) OTA Case No. 220510431
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OPINION

Representing the Parties:

For Appellants: W. Brewer

For Respondent: David Muradyan, Tax Counsel III

E. LAM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, W. Brewer (appellant-wife) and J. Brewer (appellant-husband) (Dec'd) (collectively, appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants' claim for refund of \$3,605.28 for the 2020 tax year.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 demonstrated reasonable cause for the late payment of tax.
2. Whether the underpayment of estimated tax penalty (estimated tax penalty) can be abated.²

¹ On appeal, appellants claim \$5,346.97 in penalties paid. However, FTB proposed to assess (and appellants paid) a lower amount of penalties: a late payment penalty of \$3,040.28 and an underpayment of estimated tax penalty of \$565.00. As such, the Office of Tax Appeals finds that the correct amount in dispute is \$3,605.28.

² Appellants appear to raise the estimated tax penalty as an issue in its refund claim and paid the penalty. Therefore, OTA will discuss it in this Opinion.

FACTUAL FINDINGS

1. Appellants timely filed a joint 2020 California Resident Income Tax Return (California tax return). Their California tax return reported a \$46,068 tax balance due after applying a \$5,000 extension payment and \$222,590 of income tax withholding credits. Appellants also self-assessed a \$578 estimated tax penalty.
2. FTB subsequently issued a Notice of Tax Return Change – Revised Balance (Notice) and adjusted appellants' withholding credits from \$222,590 to \$217,059. The Notice also imposed a late payment penalty and an estimated tax penalty, plus applicable interest, because appellants untimely paid the remaining portion of their 2020 taxes due when they filed their 2020 California tax return on extension.
3. In response to the Notice, appellants submitted payment in the amount of \$10,299.97. Appellants also disagreed with the Notice and submitted appellant-husband's W-2 to establish that appellants' claimed withholding credits of \$222,590.00, as originally reported on their 2020 California tax return, was correct.
4. FTB accepted appellant-husband's W-2 as proof that appellants properly claimed \$222,590.00 of income tax withholding credits. After revising the Notice to take into account those withholding credits, FTB reduced the late payment penalty to \$3,040.28 and the estimated tax penalty to \$565.00, and imposed applicable interest of \$582.44. Since appellants previously remitted \$578.00 for self-assessing the estimated tax penalty and a \$10,299.97 payment in response to the Notice, FTB refunded to appellants \$6,690.25.³
5. Appellants filed a claim for refund, which FTB denied.
6. This timely appeal followed.

DISCUSSION

Issue 1: Whether appellants have demonstrated reasonable cause for the late payment of tax.

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, unless it is

³ \$6,690.25 = [\$578.00 of the paid estimated tax penalty + \$10,299.97 payment in response to the Notice] – [\$565.00 of imposed estimated tax penalty + \$3,040.28 of imposed late payment penalty + \$582.44 of imposed interest]

shown that the failure is due to reasonable cause and not due to willful neglect. 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 due date for the 2020 tax year was postponed to May 17, 2021.⁴ Appellants, however, did not remit payment until October 14, 2021; therefore, FTB imposed the late payment penalty.

Here, appellants appear to dispute that they are subject to the late payment penalty. Appellants assert that appellant-wife spoke with FTB’s “account resolutions group” with regards to the Notice. Appellants contend that appellant-wife was told by FTB that appellants did not owe the amounts due from the Notice and that FTB would process appellants’ payments for a refund. Appellants then received a refund in the amount of \$6,690.25 from FTB. It appears that appellant-wife interpreted the conversation with FTB and the subsequent refund of the \$6,690.25 to mean that appellants are not subject to the late payment penalty.

However, appellants were in fact subject to the late payment penalty. Although FTB revised the Notice and agreed with appellants that the originally reported income tax withholding credit of \$222,590 was correct, appellants did not pay all of their taxes due by the May 17, 2021 postponed deadline, even after applying the \$5,000 extension payment and \$222,590 of withholding credits. Therefore, appellants are subject to the late payment penalty and OTA finds that FTB properly imposed it.⁵

Appellant-wife also contends she has experienced hardship because appellant-husband passed away on January 29, 2021. Since FTB did not assert that appellants acted with willful neglect, the remaining issue here is whether appellants have demonstrated reasonable cause for their late payment for purposes of abating the 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.) Notably, illness may establish reasonable

⁴ See <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2021-03-state-tax-deadline-for-individuals-postponed-until-may-17-2021.html>.

⁵ OTA notes that it appears FTB miscalculated the late payment penalty based on the total tax unpaid of \$40,537, instead of \$46,068 as reported on appellants’ 2020 California tax return. As the penalty calculation is in appellants’ favor, it will not be discussed further.

cause where the taxpayers present credible and competent proof that the circumstances of the illness prevented the taxpayers from complying with the law. (*Appeal of Triple Crown Baseball*, 2019-OTA-025P.) However, if the difficulties simply caused the taxpayers to sacrifice the timeliness of one aspect of their affairs to pursue other aspects, the taxpayers must bear the consequences of that choice. (*Ibid.*) Illness or other personal difficulties may be considered reasonable cause if the taxpayers present credible and competent proof that they were continuously prevented from filing a tax return or paying tax. (See *Appeal of Head and Feliciano*, 2020-OTA-127P [involving the late filing penalty]; see also *Appeal of Triple Crown Baseball, supra*, fn. 8 [decisions analyzing whether reasonable cause existed for failure to timely file a tax return is persuasive authority for determining whether reasonable cause existed for the failure to timely pay the tax].)

However, appellants have not demonstrated that the late payment occurred despite the exercise of ordinary business care and prudence. (*Appeal of Scanlon, supra.*) Additionally, appellants have not shown that appellant-husband's death continuously prevented appellants from timely paying their tax obligation. (See *Appeal of Head and Feliciano, supra*; see also *Appeal of Triple Crown Baseball, supra.*) Based on the foregoing, appellants have failed to establish reasonable cause to abate the late payment penalty.

Issue 2: Whether the estimated tax penalty can be abated.

Internal Revenue Code (IRC) section 6654 imposes an addition to tax, which is treated as and often referred to as a penalty, where taxpayers fail to timely pay estimated tax. Subject to certain exceptions not relevant to the issues on appeal, R&TC section 19136 incorporates IRC section 6654 but modifies the due dates and amounts for payment of estimated taxes.


Here, appellants present the same arguments made with respect to the late payment penalty in their request for the abatement of the estimated tax penalty. There are a few limited exceptions to the penalty (see, e.g., IRC section 6654(e)(3)(A) & (B)), but appellants do not raise any of them and the record does not establish that these exceptions are applicable here. Therefore, the estimated tax penalty cannot be abated.

HOLDINGS

1. Appellants have not demonstrated reasonable cause for the late payment of tax.
2. The estimated tax penalty cannot be abated.


DISPOSITION

FTB’s action in denying appellants’ claim for refund is sustained.


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Eddy Y.H. Lam
 Administrative Law Judge

We concur:

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Kenneth Gast
 Administrative Law Judge

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Josh Aldrich
 Administrative Law Judge

Date Issued: 5/3/2023