

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Consolidated Appeals of:        ) OTA Case Numbers 21017162, 21037461  
ESTATE OF G. TUTTLE                                        )  
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**OPINION**

Representing the Parties:

For Appellant:   Lenny Yeh, CPA

For Respondent:   David Hunter, Tax Counsel IV

For Office of Tax Appeals (OTA):                   Tom Hudson, Tax Counsel III

R. TAY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, the Estate of G. Tuttle (appellant) appeals from the action of the Franchise Tax Board (respondent) in denying appellant’s claims for refund of \$5,229.25 for the 2015 tax year, \$3,990.58 for the 2016 tax year, \$15,516.44 for the 2017 tax year, and \$10,390.90 for the 2018 tax year.<sup>1</sup> Appellant waived its right to an oral hearing, so the OTA decides this matter based on the written record.

**ISSUES**

1. Whether appellant has shown that the late payment penalties should be abated for tax years 2015, 2016, 2017, and 2018 (the tax years at issue).
2. Whether appellant has shown that the estimated tax penalty should be abated for the 2017 tax year.

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<sup>1</sup> Appellant filed a separate appeal for 2015, which OTA consolidated with its appeal for the 2016, 2017 and 2018 tax years.

### FACTUAL FINDINGS

1. Mr. Tuttle suffered from a brain tumor starting in or around 2004, including in the tax years at issue. He received treatment at UCSF Medical Center and UCI Medical Center during the tax years at issue.
2. Mr. Tuttle did not file timely tax returns for the tax years at issue before he passed away on April 28, 2019.
3. Respondent issued a Demand for Tax Return for 2015 on April 5, 2017, then a Demand for Tax Return for 2016 on August 7, 2019. Respondent issued a Notice of Proposed Assessment (NPA) for these tax years. Mr. Tuttle did not respond to the demands or NPAs in a timely manner.
4. By a letter dated February 6, 2020, appellant's representative informed respondent that Mr. Tuttle had been "battling brain cancer during the last ten years" and had passed away on April 28, 2019.
5. On February 10, 2020, appellant's representative filed California income tax returns on behalf of appellant for the tax years at issue.<sup>2</sup> Respondent received payments for the 2017 and 2018 tax years dated March 11, 2020. On March 15, 2020, respondent received payment for the 2016 tax year, and on September 23, 2020, respondent received appellant's tax payment for the 2015 tax year.
6. Appellant's representative submitted timely claims for refund for the tax years at issue. These refund amounts included late filing penalties, demand penalties, filing enforcement fees, and interest.
7. After reviewing appellant's claims for refund, respondent abated the late filing penalties for the tax years at issue. Respondent also abated the demand penalties imposed for the 2015 and 2016 tax years and canceled the filing enforcement fee for 2016.
8. However, respondent imposed late payment penalties for the tax years at issue and denied claims for refund of the late payment penalty for each of the tax years at issue, and for the estimated tax penalty for the 2017 tax year.

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<sup>2</sup> Mr. Tuttle had previously filed an untimely California income tax return for 2015 on May 11, 2017, reporting zero federal adjusted gross income. Therefore, the return filed for 2015 on February 10, 2020, was technically an amended tax return.

## DISCUSSION

Issue 1: Whether appellant has shown that the late payment penalties should be abated for the tax years at issue.

R&TC section 19132 provides that respondent may impose a late payment penalty when a taxpayer fails to pay the amount shown as due on the return on or before the due date of the return. The late payment penalty may be abated if the taxpayer establishes that the failure to make a timely tax payment was due to reasonable cause and was not due to willful neglect. (R&TC, § 19132(a)(1).) Here, there is no dispute that appellant paid the tax liability after the due date for each tax year. Appellant has not disputed the method used to calculate the late payment penalty, and there is no evidence of a calculation error in the record. The disputed matter is whether appellant has shown reasonable cause to excuse his failure to make timely tax payments for the tax years at issue.

To establish reasonable cause, a taxpayer must show that the failure to make a timely payment occurred despite the exercise of ordinary business care and prudence. (*Appeal of Triple Crown Baseball LLC*, 2019-OTA-025P.) While illness or other personal difficulties may constitute a reasonable cause, taxpayers must present competent and credible proof that the circumstances surrounding the illness prevented the taxpayer from complying with the law. (*Ibid.*) If the difficulties simply caused the taxpayer to sacrifice the timeliness of one aspect of the taxpayer's affairs to pursue other aspects, the taxpayer must bear the consequences of that choice. (*Ibid.*)

Mr. Tuttle suffered from various occurrences of cancer starting in 2004. In 2017, he had a recurrence of a brain tumor, and eventually passed away in April 2019. Because of Mr. Tuttle's health condition, appellant argues that reasonable cause existed to excuse the late payment of his income tax. Appellant argues that Mr. Tuttle's battle with cancer "impacted his mental and physical capabilities" and prevented him from satisfying his tax obligations.

The appropriate standard, when evaluating whether appellant has met his burden of proof, is proof by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(b).) A preponderance of the evidence means that the taxpayer must establish by documentation or other evidence that the fact he asserts is more likely than not to be correct. (*Concrete Pipe and Products of California, Inc., v. Construction Laborers Pension Trust for Southern California* (1993) 508 U.S. 602, 622.)

On appeal, appellant submitted lengthy documentation about Mr. Tuttle’s medical condition and treatment, including detailed medical records from UCSF Medical Center that provided information about his treatment and condition from 2009 through February 2017. In August 2015, the doctor noted that Mr. Tuttle was “stable clinically with no new symptoms” and the result of his neurological review was “(n)egative for headache, dizziness, tremors, speech change, seizures and loss of consciousness.” In May 2017, the doctor noted Mr. Tuttle began having minor seizures, but that he reported having no headaches or any other negative symptoms. The doctor also conducted a neurological exam and noted he was “alert and oriented” and had “intact short term and long term memory.”

Appellant also provided extensive medical records from UC Irvine (UCI) Health describing Mr. Tuttle’s bi-weekly oncology visits and medical condition from January 2018 through April 2019. The records show that Mr. Tuttle began chemotherapy in September 2017. In March 2018, the medical record explains that he suffered from hemiparesis on the left side of his body, and nausea because of his medication. He also took two kinds of seizure medication to address an ongoing risk related to a prior cancer incident. In May and June 2018, he began complaining of pain in other areas of his body, including his shoulder, and the doctor recommended assistive devices to prevent falling on account of reduced function of his feet.

As stated above, illness may constitute reasonable cause if the circumstances surrounding the illness prevented the taxpayer from complying with the law. (*United States v. Boyle*, (1985) 469 U.S. 241; *Appeal of Triple Crown Baseball LLC*, 2019-OTA-025P.) The question is whether Mr. Tuttle’s condition was serious enough to arise to the level of reasonable cause during the tax years at issue. Courts have held that “the type of illness or debilitation that might create reasonable cause is one that because of severity or timing makes it virtually impossible for the taxpayer to comply—things like emergency hospitalization or other incapacity occurring around tax time.” (*In re Carlson*, (7th Cir. 1997) 126 F.3d 915, 923; see also *Stine v. U.S.* (Fed. 2012) 106 Fed.Cl. 586; *Nasir v. Commissioner*, T.C. Memo. 2011-283.) Indeed, if the difficulties simply cause the taxpayer to sacrifice the timeliness of one aspect of the taxpayer’s affairs for another, the taxpayer must bear the consequences of that choice. (*Appeal of Triple Crown Baseball LLC*, 2019-OTA-025P.)

“Evidence that the taxpayer is able to conduct his or her business or financial affairs despite the illness shows that the illness is not severe enough to constitute reasonable cause.”

(*Stine v. U.S.*, *supra*. at 592.) The Court of Appeals found that a law firm did not have reasonable cause during the founder’s significant illness because, although the founder was also the rainmaker and principal litigator, the firm “continued to operate during the relevant time period, and continued to attract business.” (*Van Camp & Bennion, P.S. v U.S.* (9th Cir. 2003) 70 Fed.Appx. 937.) The founder was able to discuss business during his illness, and the company had other persons with the authority to conduct the corporation’s financial transactions; thus, the court found appellant did not have reasonable cause. (*Ibid.*)

On the other hand, courts have found that lengthy hospitalizations during tax season (*Harbour v. Commissioner*, T.C. Memo. 1991-532), paralysis (*U.S. v. Isaac*, (E.D.Ky. 1991) 68 A.F.T.R.2d 91-5094), or prolonged symptoms which fully disable a person (*Jones v. Commissioner*, T.C. Memo. 1988-542) indicate a serious illness which may constitute reasonable cause. Thus, the question is whether Mr. Tuttle’s illness was so severe that it made it “virtually impossible” to satisfy his tax obligations during the tax years at issue.

Here, there is no personal testimony of Mr. Tuttle’s capacity and ability to tend to his affairs, and thus, the opinion relies on reasonable inferences based on hospital notes, and tax returns filed posthumously. The record indicates that Mr. Tuttle was not incapacitated such that it was “virtually impossible” for him to fulfill his tax obligations until late 2018. Mr. Tuttle continued to work part-time as a basketball coach despite his illness. Thus, the record shows that Mr. Tuttle’s illness was not debilitating any sooner than late 2018 and until his passing in April 2019. Consequently, although Mr. Tuttle deserves sympathy for suffering a brain tumor for many years, OTA cannot infer from the available evidence that the taxpayer’s lengthy illness prevented him from estimating his tax liability and making timely tax payments for the 2015, 2016 and 2017 tax years. However, OTA does find reasonable cause existed to excuse the late payment of tax for the 2018 tax year based on the increasing severity of his symptoms, and his passing soon after the filing deadline of his 2018 California income tax return.

Issue 2: Whether appellant has shown that the estimated tax penalties should be abated for the 2017 tax year.

California generally conforms to Internal Revenue Code (IRC) section 6654 by imposing an estimated tax penalty for the failure to make timely estimated income tax payments. (R&TC, § 19136(a).) The estimated tax penalty is similar to an interest charge and it applies from the due date of the estimated tax payment until the date it is paid or April 15 of the following year, whichever comes first. (IRC, § 6654(b)(2); *Appeal of Johnson*, 2018-OTA-119P.) There is no general reasonable cause exception for the estimated tax penalty. (*Appeal of Johnson, supra*.)

There are only two situations where the estimated tax penalty may be waived. The first situation applies only where the underpayment of estimated taxes was caused by a casualty, disaster, or other unusual circumstances such that imposition of the penalty would be against equity and good conscience. (IRC, § 6654(e)(3)(A).) The second situation applies only to newly retired or disabled individuals: the penalty may be waived if the taxpayer either retired after reaching the age of 62 or became disabled during the relevant tax year, but only if the underpayment of estimated taxes was due to reasonable cause and not willful neglect. (IRC, § 6654(e)(3)(B).) The taxpayer bears the burden of proving that waiver of the penalty is warranted. (*Appeal of Saltzman*, 2019-OTA-070P.)


Here, there is no evidence in the record to show that the underpayment of estimated taxes was caused by a casualty, disaster, or other unusual circumstances such that imposition of the penalty would be against equity and good conscience. Indeed, health problems, including a cancer diagnosis, are not sufficient on their own to excuse a taxpayer from the obligation to make timely estimated tax payments. (See *Wesley v. U.S.* (N.D. Fla. 2005) 369 F.Supp.2d 1328.) There is no other evidence in the record to show that appellant is entitled to abatement of the estimated tax penalty.

HOLDINGS


1. Appellant has shown that he is entitled to abatement of the late payment penalties for the 2018 tax year, but not for the 2015, 2016 and 2017 tax years.
2. Appellant has not shown he is entitled to abatement of the estimated tax penalty for the 2017 tax year.

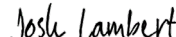
DISPOSITION

Respondent’s actions are reversed as to the late payment penalty for the 2018 tax year and are otherwise sustained in full for the 2015, 2016 and 2017 tax years.

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 Richard Tay  
 Administrative Law Judge

We concur:

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 Ovsep Akopchikyan  
 Administrative Law Judge

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 Joshua Lambert  
 Administrative Law Judge

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