

FACTUAL FINDINGS

1. For the 2021 tax year, appellants timely remitted withholding of \$241,493 and estimated tax payments totaling \$110,614. Appellants timely remitted a first quarter estimated tax payment of \$23,352. On September 7, 2021, appellants remitted an estimated tax payment of \$87,262.
2. Appellants timely filed their 2021 California Resident Income Tax Return (return), reporting an adjusted gross income (AGI) exceeding \$1 million. Appellants' return showed a \$568,585 tax liability. On April 15, 2022, appellants paid \$94,609.
3. On May 15, 2022, appellants remitted an extension payment of \$122,443.
4. FTB accepted appellants' return and issued appellants a Notice of Tax Return Change – Revised Balance (Notice) dated July 18, 2022, imposing a late payment penalty of \$6,702.80, and an estimated tax penalty of \$3,454.00.
5. Appellants requested abatement of the penalties and interest for reasonable cause.
6. FTB subsequently issued an Income Tax Due Notice for the unpaid penalties and interest. On October 27, 2022, appellants paid the amounts due, and submitted a penalty waiver request, which FTB treated as a claim for refund.
7. FTB denied appellants' claim for refund.
8. 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 penalty, where taxpayers fail to timely pay estimated tax.² 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 2021 tax year, appellants' 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.)

² 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. (IRC, § 6654.)

Appellants' 2021 tax liability shown on their return was \$568,585.00, and the required annual payment was therefore \$511,726.50 ($\$568,585.00 \times 0.90 = \$511,726.50$). Here, appellants timely remitted only \$23,352.00 by their first quarter payment due date of April 15, 2021, but the required payment was \$81,070.05.³ Appellants also underpaid their second and fourth quarter estimated payments.⁴ Appellants failed to timely make \$159,619.50 of the required annual payment.⁵ Appellants' return payment on April 15, 2022, satisfied their estimated payment requirement. FTB properly imposed an estimated tax penalty on the underpayments.

Appellants do not contest the imposition or computation of the estimated tax penalty. Instead, appellants present 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-079P.) 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 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."⁶ The exception for unusual circumstances is considerably narrower than reasonable cause. (*Appeal of Mazdyasni*, 2018-OTA-049P.)

³ The first and fourth quarter estimated tax payment installment is generally 30 percent of the tax liability, here, \$153,517.95 ($\$511,726.50 \times 0.30 = \$153,517.95$). (R&TC, § 19136.1(a)(2)(B).) Appellants were credited \$72,447.90 in withholding for the first and fourth quarter. The required payment for the first and fourth quarter should have been \$81,070.05.

⁴ The second quarter estimated tax payment installment is generally 40 percent of the tax liability, here, \$204,690.60 ($\$511,726.50 \times 0.40 = \$204,690.60$). (R&TC, § 19136.1(a)(2)(D).) Appellants were credited \$96,597.20 in withholding for the second quarter. The required payment for the second quarter should have been \$108,093.40. On September 7, 2021, appellants made a late payment of \$87,262.00, \$57,718.05 of which was applied to the underpaid first quarter installment. Appellants made no fourth quarter estimated payments.

⁵ The required annual payment was \$511,726.50. Appellants timely paid only \$352,107.00 (\$241,493.00 in withholding + estimated payments of \$110,614.00) by the due date of January 15, 2022. Thus, appellants timely payments fell short of the required annual payment by \$159,619.50 ($\$511,726.50 - \$352,107.00$).

⁶ 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. Appellants have not alleged that this exception applies; therefore, this Opinion will not discuss the exception further.

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.*) Appellants do not allege that they were subject to unusual circumstances, only that they made an unintentional error. The taxpayer’s good faith or that the taxpayer acted reasonably under the circumstances is not relevant to waiver under IRC section 6654(e)(3)(B) and that section does not permit abatement of the estimated tax penalty solely on the basis of reasonable cause. (*Appeal of Mazdyasni, supra.*)

Here, appellants assert that their CPA incorrectly reported appellants’ estimated taxes on their part. Appellants provide no detail or documentation for this assertion. Unsupported assertions are not sufficient to satisfy a taxpayer’s burden of proof. (*Appeal of Porreca, 2018-OTA-095P.*) Appellants’ argument focuses on the failures of their CPA, but the reasonable cause standard at issue in *U.S. v. Boyle*⁷ 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 is not relevant to waiver under IRC section 6654(e)(3)(B). (*Appeal of Mazdyasni, supra; Appeal of Saltzman, supra.*) Appellants’ statements regarding their history of timely payment and that they did not intend to pay late are not relevant to waiver under IRC section 6654(e)(3)(B). (*Appeal of Mazdyasni, supra; Appeal of Saltzman, supra.*)

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 the estimated tax penalty to be imposed inequitably under appellants’ circumstances. Thus, the estimated tax penalty may not be waived or abated.

Issue 2: Whether appellants have shown reasonable cause for the late payment of their 2021 taxes.

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. 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.) The penalty is five percent of the initial underpaid tax amount plus one-half of one percent of the outstanding liability for each

⁷ (1985) 469 U.S. 241.

subsequent month or fraction thereof for a maximum of 40 months. (R&TC, § 19132.) Here, FTB properly imposed the late payment penalty because the payment due date for the 2021 tax year was April 15, 2022. Appellants did not satisfy their 2021 tax liability until May 15, 2022, when they remitted a payment of \$122,443. Thus, FTB properly imposed a late payment penalty of \$6,702.80.⁸

The late payment penalty may be abated where the taxpayer shows 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 the late payment of the tax, a taxpayer must show that failure to make timely payment of the proper amount of tax occurred despite the exercise of ordinary business care and prudence. (*Appeal of Moren*, 2019-OTA-176P (*Moren*)). The taxpayer bears the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Ibid.*) Taxpayer must present credible, competent, and relevant evidence to show error in FTB's determination. (*Appeal of Xie*, 2018-OTA-076P.) The most important factor in determining reasonable cause and good faith is the extent of the taxpayer's effort to assess his or her proper tax liability. (*Moren, supra.*)

Appellants' assertions regarding the estimated tax penalty do not constitute reasonable cause as applied to their late payment of the 2021 tax liability. The record is silent as to appellants' efforts to determine their tax liability. Unlike in *Moren, supra*, appellants have not demonstrated the actions they undertook to reasonably estimate or determine their tax liability. In *Appeal of Friedman*, 2018-OTA-077P, concerning reasonable cause in the late filing penalty context, the taxpayers failed to confirm that an electronic payment was successful. There, OTA found that an underpayment resulting from that oversight did not by itself constitute reasonable cause. (*Ibid.*) Similarly, appellants' reliance on their CPA is unavailing. Rather than exercise ordinary business care and prudence, appellants chose to rely solely on their tax return preparer, and while OTA recognizes that appellants intended to meet their tax obligations, their actions do not establish reasonable cause for the late payment. (See *Appeal of Fisher*, 2022-OTA-337P; *U.S. v. Boyle, supra.*)

⁸ The unpaid tax was \$121,869.00. 5 percent of the unpaid tax is \$6,093.45. Appellants were one month late in paying. .05 percent of the outstanding liability is \$609.35. The late payment penalty is \$6,702.80.

Appellants refer to their history of timely filing and payment to support a claim of reasonable cause. Appellants also provide a letter from the IRS which abated their federal failure-to-pay penalty for the 2021 tax year pursuant to its penalty abatement program called First Time Abate. However, for the 2021 tax year, neither the California Legislature nor FTB adopted a comparable penalty abatement program. While a history of timely payment may be considered for credibility and intent of the taxpayer, it does not, by itself, show reasonable cause. (*Moren, supra.*) Appellants must establish that their failure to timely pay their taxes was due to reasonable cause, which they have not done.⁹

Issue 3: Whether appellants are 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 appellants' 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 2012.¹⁰ (*Ibid.*) Appellants do 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 written record that none of these statutory provisions apply. Therefore, FTB properly imposed interest and OTA has no basis to abate it.

⁹ R&TC section 19132.5, effective for tax years beginning on or after January 1, 2022, allows an individual taxpayer to request a one-time abatement of a timeliness penalty. As the 2021 tax year is at issue here, this newly enacted provision is inapplicable.

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 FTB's written advice in response to a written request.

HOLDINGS

1. The estimated tax penalty cannot be waived or abated.
2. Appellants have not shown reasonable cause for the late payment of their 2021 tax liability.
3. Appellants are not entitled to interest abatement.

DISPOSITION

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

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 Asaf Kletter
 Administrative Law Judge

We concur:

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 Teresa A. Stanley
 Administrative Law Judge

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 Andrew Wong
 Administrative Law Judge

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