

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
E. CRESPO

) OTA Case No. 221011543
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OPINION

Representing the Parties:

For Appellant: E. Crespo
For Respondent: Paige Chang, Tax Counsel

R. TAY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, E. Crespo (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claims for refund of \$883.00 for the 2018 tax year; \$1,694.00 for the 2019 tax year; and \$2,242.25 for the 2020 tax year.

Appellant waived the right to an oral hearing; therefore, this panel decides this matter based on the written record.

ISSUES¹

1. Whether appellant has shown error in respondent’s imposition of the late filing penalty for the 2018, 2019 and 2020 tax years (the tax years at issue).
2. Whether appellant has shown error in respondent’s imposition of the estimated tax penalty for the 2018 and 2020 tax years.²

¹ In its opening brief, respondent includes interest as an issue in dispute. Appellant’s claims for refund included a request for a refund of interest; however, appellant does not appear to dispute respondent’s imposition of interest on appeal. In the Requests for Appeal for the 2018, 2019 and 2020 tax years, appellant did not include interest in the amount at issue. Appellant also provides no separate argument for interest abatement, and this panel finds no grounds for interest abatement in the record. Accordingly, this Opinion will not discuss appellant’s entitlement to a refund of interest.

² Appellant inexplicably did not include the estimated tax penalty in the Request for Appeal for the 2019 tax year. Consequently, respondent’s imposition of the estimated tax penalty for the 2019 tax year is not in dispute.

FACTUAL FINDINGS

1. Appellant did not file timely California income tax returns for the tax years at issue.
2. On April 15, 2022, appellant filed her 2018, 2019 and 2020 California income tax returns. On her returns, appellant reported underpaying her estimated tax obligations during the tax years at issue.
3. Subsequently, respondent imposed the late filing penalty and the estimated tax penalty for the tax years at issue.
4. In May 2022, respondent received payments to satisfy appellant's balances for the tax years at issue.
5. Appellant subsequently filed timely refund claims. Appellant asserted she was in Ecuador from February 17, 2019, to August 17, 2021. Appellant also asserted she could not return earlier due to the COVID-19 pandemic, which prevented her from traveling. For these reasons, appellant requested a refund of the late filing and estimated tax penalties.
6. Respondent denied appellants' refund claims, and appellant filed this timely appeal.

DISCUSSION

Issue 1: Whether appellant has shown error in respondent's imposition of the late filing penalty for the tax years at issue.

R&TC section 19131 provides that a late filing penalty shall be imposed when a taxpayer fails to file a tax return on or before its due date, unless the taxpayer establishes that the late filing was due to reasonable cause and was not due to willful neglect. The penalty is specified as 5 percent of the tax due for each month that a valid tax return is not filed after it is due, not to exceed 25 percent of the tax. (R&TC, § 19131(a).) Appellant does not dispute respondent's calculation of the penalty; rather, appellant argues the penalty should be abated based on reasonable cause.

The late filing penalty may be abated based upon a showing of reasonable cause—that is, by demonstrating that the failure to timely act as required by law occurred despite the exercise of ordinary business care and prudence. (R&TC, §§ 19131(a), 19133.) The burden of establishing reasonable cause abatement in this matter lies with appellant. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.) Appellant must demonstrate, by a preponderance of the evidence, that she

acted as an ordinarily intelligent and prudent businessperson would have acted under similar circumstances. (*Ibid.*) Unsupported assertions are insufficient to meet this burden. (*Appeal of Porreca*, 2018-OTA-095P.)

Appellant argues that reasonable cause existed because she was in Ecuador at the time the tax returns for the tax years at issue were due. She alleges that the COVID-19 pandemic prevented her from traveling, which prevented her from obtaining the necessary documents to file timely returns.

Appellant's arguments do not demonstrate reasonable cause existed. Difficulty in obtaining information generally does not constitute reasonable cause for the late filing of a return. (*Appeal of Xie*, 2018-OTA-076P.) A taxpayer must establish that he or she *could not* have acquired the information necessary to make an estimate of his tax liability. (*Appeal of Moren*, 2019-OTA-176P.) An assertion that records were difficult to obtain without any substantiation of efforts made to retrieve those records or otherwise showing that they were unobtainable is not sufficient to show reasonable cause. (*Ibid.*)

Appellant has not demonstrated that she *could not* have obtained the necessary information to file a timely income tax return for the tax years at issue. This panel acknowledges appellant was in a challenging situation with the COVID-19 pandemic; however, appellant has not provided sufficient evidence to show that her records were unobtainable electronically or otherwise. Appellant has also not provided evidence of any efforts she made to retrieve those records. Consequently, appellant has not met her burden to show reasonable cause.

Issue 2: Whether appellant has shown error in respondent's imposition of the estimated tax penalty for the 2018 and 2020 tax years.

Except as otherwise provided, R&TC section 19136 conforms to Internal Revenue Code (IRC) section 6654 and imposes a penalty for the failure to timely make estimated income tax payments at the end of the installment periods. (R&TC, § 19136(a); IRC, § 6654(a).) The estimated tax penalty is similar to an interest charge and applies from the due date of the estimated tax payment until the date it is paid or April 15 following the tax year, whichever is earlier. (IRC, § 6654(b)(2); *Appeal of Johnson*, 2018-OTA-119P.)

It is undisputed appellant failed to make timely estimated tax payments. Appellant also does not dispute the calculation of the penalty; rather, appellant argues the estimated tax penalty

should be forgiven for the same reasonable cause arguments as set forth above. However, there is no provision under the law to abate the estimated tax penalty for reasonable cause.

IRC section 6654(e)(3)(A) provides a limited waiver to the imposition of the estimated tax penalty if, by reason of casualty, disaster, or other unusual circumstances, imposing the penalty would be against equity and good conscience. 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 inequitable to impose the estimated tax penalty.

(Appeal of Johnson, supra.)

Here, appellant has not shown that the COVID-19 pandemic caused a hardship or loss such that it would be inequitable to impose the estimated tax penalty. Appellant argues she was unable to travel; however, this panel finds the inability to travel caused by the COVID-19 pandemic did not arise to the level of a hardship to appellant that would result in inequity if respondent’s action is sustained. Appellant has not shown she was unable to obtain the necessary documents and information by another means (such as, electronically) to timely make estimated tax payments for the 2018 and 2020 tax years, and thus, has not met her burden of showing hardship.

HOLDINGS

1. Appellant has not shown error in respondent’s imposition of the late filing penalty for the tax years at issue.
2. Appellant has not shown error in respondent’s imposition of the estimated tax penalty for the 2018 and 2020 tax years.

DISPOSITION

Respondent’s action is sustained in full.

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 Richard Tay
 Administrative Law Judge

We concur:

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 Sheriene Anne Ridenour
 Administrative Law Judge

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 Natasha Ralston
 Administrative Law Judge

Date Issued: 9/21/2023