

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
O. SOFER

) OTA Case No. 22029676
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OPINION

Representing the Parties:

For Appellant:

O. Sofer

For Respondent:

AnaMarija Antic-Jezildzic, Attorney

J. ALDRICH, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, O. Sofer (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$1,004.85 for the 2020 tax year.

Appellant elected to have this appeal determined pursuant to the procedures of the Small Case Program. Those procedures require the assignment of a single administrative law judge. (Cal. Code Regs., tit. 18, § 30209.1.) Appellant waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

ISSUES

1. Whether appellant is entitled to abatement of the late payment penalty.
2. Whether appellant has established any basis to abate interest.

FACTUAL FINDINGS

1. Appellant timely filed his California Resident Income Tax Return (return) and made a partial payment of \$4,766.
2. Appellant's total tax liability was not paid by the COVID-19 extended due date of May 17, 2021.¹
3. By letter dated May 18, 2021, FTB acknowledged appellant's request for an installment agreement. The acknowledgement letter indicated that appellant may receive an Income Tax Due Notice with appellant's current balances, including any additional penalties and interest.
4. Appellant made payments, which FTB received on June 15, 2021, June 21, 2021, and July 19, 2021.
5. FTB issued a State Income Tax Balance Due Notice dated August 9, 2021, which imposed a late payment penalty of \$926.29, and indicated that payment was required by August 24, 2021, to avoid additional interest and penalties.
6. FTB issued an Installment Agreement - Electronic Funds Transfer (EFT) Approval letter dated August 10, 2021. The EFT letter accepted appellant's request for an installment agreement, explained the \$34 fee to establish an agreement, and indicated that interest and penalties would continue to accrue until the liability was paid in full. FTB imposed an installment agreement fee of \$34.
7. On August 12, 2021, FTB received a final payment from appellant, which paid the balance in full.
8. On September 27, 2021, FTB received appellant's request for a refund of the late payment penalty and interest based on reasonable cause due to financial hardship, lack of knowledge about the imposition of the penalty and interest, and good filing history.
9. FTB issued appellant a Notice of Action upon Taxpayer's Claim for Refund denial letter dated October 28, 2021, explaining that appellant had not established reasonable cause to abate the late payment penalty and interest.
10. This timely appeal followed.

¹ In response to COVID-19, FTB postponed the 2020 due dates, for individuals, for returns and payments to May 17, 2021. (See <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2021-03-state-tax-deadline-forindividuals-postponed-until-may-17-2021.html>.)

DISCUSSION

Issue 1: Whether appellant is entitled to abatement of the late payment penalty.

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 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.)

When FTB imposes a penalty, it is presumed that the penalty was imposed correctly. (*Appeal of Xie*, 2018-OTA-076P.) However, the late payment penalty may be abated if the taxpayers 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 the late payment of tax, a taxpayer must show that the failure to make a timely payment of the proper amount of tax occurred despite the exercise of ordinary business care and prudence. (*Appeal of Moren*, 2019-OTA-176P.) A taxpayer bears the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Ibid.*) Ignorance of the law is not reasonable cause for failure to comply with statutory requirements. (*Appeal of Porreca*, 2018-OTA-095P.) A taxpayer does not exercise ordinary business care and prudence when he fails to acquaint himself with the requirements of California tax law. (*Ibid.*) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.)

There is no dispute that appellant failed to timely pay his tax liability for the 2020 tax year. Appellant's only argument is that FTB failed to provide clear and accurate information on its website about the penalties and fees associated with an installment agreement. Appellant asserts that three FTB employees represented, during telephone calls, that there were no additional fees or costs with an installment agreement. In sum, appellant contends that the information is ambiguous and confusing at best and constitutes misleading false representations at worse. Appellant states, "Had I known that I would be charged over \$1,000 in penalties and interest, in addition to the hardships I was already experiencing, I would not have elected to enroll in the payment plan." For these reasons, appellant argues that the late payment penalty should be abated.

To help frame the remaining analysis, OTA examines the definition and purpose of an installment plan. Pursuant to R&TC section 19008, FTB may, in cases of financial hardship,

allow a taxpayer to enter into installment payment agreements to make payment of taxes due, plus applicable interest, and penalties over the life of the installment period. The first paragraph of FTB's Installment Agreement Request (FTB Form 3567) states that 1) FTB "will always ask [taxpayers] to pay [their] tax liability (including, interest and penalties) in full;" 2) an installment agreement is for taxpayers who "are financially unable to pay the tax liability in full, [and instead] make payments in installments over time;" and 3) FTB recommends that taxpayers "make the largest monthly payment possible because [their] tax liability continues to accrue interest and applicable penalties until paid in full."

Appellant appears to be operating under the impression that by entering into an installment agreement, FTB should be prevented or estopped from imposing the late payment penalty and interest; or conversely, that the penalty and interest were imposed because he elected to participate in an installment plan. The four elements of equitable estoppel are: (1) the government agency (FTB) must be shown to have been aware of the actual facts; (2) the government agency (FTB) must be shown to have made an incorrect or inaccurate representation to the relying party (appellant) and intended that its incorrect or inaccurate representation would be acted upon by the relying party or have acted in such a way that the relying party had a right to believe that the representation was so intended; (3) the relying party (appellant) must be shown to have been ignorant of the actual facts; and (4) the relying party (appellant) must be shown to have detrimentally relied upon the representations or conduct of the government agency (FTB). (*Appeal of Western Colorprint*, 78-SBE-071, Aug. 15, 1978.) The party asserting an estoppel bears the burden of proof and, thus, appellant must establish each of these four elements. (*Ibid.*)

Here, the record does not precisely chronicle the conversation between appellant and FTB's employees. For example, OTA does not know the questions asked or the answers given. Thus, there is insufficient evidence to show that FTB was fully apprised of all facts. Likewise, there is insufficient evidence to show that the advice given was actually incorrect or misleading. For these reasons, the doctrine of equitable estoppel is inapplicable in this appeal. Furthermore, OTA notes that this exchange transpired over the telephone (i.e., informally). Thus, even if appellant's allegations were accepted as true, the estoppel doctrine would still not be applicable, since a taxing agency is not bound by the informal opinions expressed by its employees. (*Appeal of Western Colorprint*, *supra*; *Appeal of Conrad E. Dandridge*, 2019-OTA-459P.)

Further, the late payment penalty was imposed because appellant did not pay his taxes in full by the prescribed deadline of May 17, 2021. (R&TC, §§ 17041, 19132; *Appeal of Porreca, supra.*) Appellant has not provided any evidence showing that his failure to timely pay his tax for tax year 2020 was due to reasonable cause. Furthermore, appellant's participation in an installment agreement and payment of the installment agreement fee of \$34 does not relieve appellant from his statutory obligation to timely pay the tax due or the penalty for failing to timely pay. Accordingly, OTA finds that FTB properly imposed the late payment penalty and appellant has not established reasonable cause to abate the late payment penalty.

Issue 2: Whether appellant is entitled to interest abatement.

If any amount of tax is not paid by the due date, interest is required to be imposed from the due date until the taxes are paid. (R&TC, § 19101(a); *Appeal of Balch*, 2018-OTA-159P.) Interest is not a penalty; it is compensation for the taxpayer's use of money that should have been paid to the state. (*Appeal of Balch, supra.*) Imposition of interest is mandatory, and it can only be abated in certain limited situations when authorized by law. (R&TC, § 19101(a); *Appeal of Balch, supra.*)

There is no reasonable cause exception to the imposition of interest. (*Appeal of Moy*, 2019-OTA-057P.) Generally, to obtain relief from interest, taxpayers must qualify under R&TC section 19104, 19112, or 21012.² (*Ibid.*) Appellant does not allege that R&TC section 19104 or R&TC section 19112 is applicable here. OTA concludes based on the evidence in the record that neither of these statutory provisions apply. Thus, appellant is not entitled to interest abatement.

² 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, a person may be relieved from interest if that person reasonably relies on written advice from FTB in response to a written request.

HOLDINGS

1. Appellant is not entitled to abatement of the late payment penalty.
2. Appellant has not established any basis to abate interest.

DISPOSITION

FTB's denial of appellant's claim for refund is sustained.

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Josh Aldrich

Administrative Law Judge

Date Issued: 10/2/2023