

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 220610570
T. MANNERINO AND)
J. MANNERINO)
_____)

OPINION

Representing the Parties:

For Appellants: T. Mannerino
J. Mannerino

For Respondent: Brian Werking, Tax Counsel III

For Office of Tax Appeals: Oliver Pfof, Tax Counsel

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, T. Mannerino and J. Mannerino (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$1,011.81 for the 2020 taxable year.

Appellants waived their right to an oral hearing; thus, this matter is being decided based on the written record.

ISSUES

1. Whether appellants established reasonable cause for paying their taxes late.
2. Whether appellants established a basis to abate interest.

FACTUAL FINDINGS

1. Appellants filed a joint 2020 California State Income Tax Return (Form 540) on October 14, 2021. That same day, FTB received an \$11,557 payment from appellants, the amount of tax reported as due on the return.
2. On their 2020 federal income tax return, appellants attached IRS Forms 8915-E, titled *Qualified 2020 Disaster Retirement Plan Distributions and Repayments*, reporting

- coronavirus-related distributions from their respective retirement plans or accounts totaling \$200,000. On the IRS Forms 8915-E, appellants elected not to include the coronavirus-related distributions in gross income ratably over a three-year taxable period.
3. Subsequently, FTB issued a notice informing appellants it had imposed a late-payment penalty, plus interest, in connection with the \$11,557.00 tax return payment, resulting in a balance due of \$1,010.92 (revised balance).
 4. On November 12, 2021, appellants paid the \$1,010.92, and submitted claims for refund requesting abatement of the late-payment penalty for reasonable cause, and abatement of interest due to an FTB error or delay.
 5. FTB denied appellants' claims for refund.

DISCUSSION

Issue 1: Whether appellants established reasonable cause for paying their taxes late.

The tax imposed under the Personal Income Tax Law shall be paid at the time and place fixed for filing the return, determined without regard to any extension of time for filing the return. (R&TC, § 19001.) Returns filed by individual taxpayers on a calendar-year basis shall be filed on or before the 15th day of April following the close of the calendar year. (R&TC, § 18566.) FTB allows an automatic six-month extension to individuals to file a return if the return is filed within six months of the original due date. (R&TC, § 18567(a)(1); Cal. Code Regs., tit. 18, § 18567(a).) The automatic six-month extension to file is not an extension of time to pay; tax imposed under the Personal Income Tax Law remains due on the original due date of the return. (Cal. Code Regs., tit. 18, § 18567(a).) In response to the COVID-19 pandemic, FTB postponed the due date for individuals to make their 2020 tax return payments to May 17, 2021.¹

A late-payment penalty is imposed for failing to pay the amount shown as tax on any return on or before the date prescribed for payment of that tax, unless it is shown the failure is due to reasonable cause and not due to willful neglect. (R&TC, § 19132(a)(1), (a)(1)(A).) When FTB imposes a penalty, it is presumed correct, subject to rebuttal by the taxpayer. (*Appeal of Xie*, 2018-OTA-076P.) FTB does not allege appellants acted with willful neglect. The discussion therefore focuses on whether appellants established reasonable cause for paying their

¹ See *State Tax Deadline for Individuals Postponed to May 17, 2021*, March 19, 2021, available at: <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2021-03-state-tax-deadline-for-individuals-postponed-until-may-17-2021.html>.

2020 taxes late in light of the federal Coronavirus Aid, Relief, and Economic Security Act (CARES Act).²

R&TC section 17041(a) imposes a tax “upon the entire taxable income of every resident of this state.” R&TC section 17071 incorporates Internal Revenue Code (IRC) section 61,³ which defines “gross income” as “all income from whatever source derived,” including annuity and pension income. (IRC, § 61(a)(9), (11).) Generally, a distribution from a qualified retirement plan or an individual retirement account (IRA) is included in gross income in the taxable year of distribution. (IRC, §§ 402(a), 408(d).)⁴

The CARES Act, among its many provisions, provides special rules for “coronavirus-related distributions” from eligible retirement plans and accounts. (CARES Act, § 2202(a).) As relevant here, the CARES Act allows qualified individuals to take “coronavirus-related distributions” from an eligible retirement plan or account, not to exceed \$100,000, without incurring what is commonly referred to as an early distribution penalty.⁵ (CARES Act, § 2202(a)(1), (2), (4)(A).) Further, the CARES Act allows qualified individuals to include the “coronavirus-related distribution” in gross income ratably over a three-year taxable period, beginning with the taxable year 2020, unless the individual elects to include the entire “coronavirus-related distribution” in the taxable year of distribution. (CARES Act, § 2202(a)(5).) In this appeal, appellants made such an election.

However, section 2202(a)(5) of the CARES Act amends neither sections 402 nor 408 of the IRC. With a general federal conformity date of January 1, 2015,⁶ section 2202(a)(5) has no impact on this appeal. While this might tactically help appellants,⁷ the end result is that IRC section 61, as it read on January 1, 2015, applies as if the CARES Act did not exist for California

² Pub.L. 116-136, Div. A, Title II, 134 Stat. 343 (Mar. 27, 2020).

³ California conforms to IRC section 61 as of January 1, 2015. (See R&TC, § 17024.5(a)(1)(P).)

⁴ California law “automatically” conforms to IRC sections 402(a) and 408(d) with modifications that are not relevant to the issues in this appeal. (See R&TC, § 17501.)

⁵ IRC section 72(t) provides a 10 percent additional tax on early distributions from qualified retirement plans unless certain conditions are met, and this tax is commonly referred to as the early distribution penalty; California conforms with modifications, including a reduced penalty amount of 2.5 percent. (See R&TC, § 17085.)

⁶ See R&TC, § 17024.5(a)(1)(P).

⁷ Generally, California taxpayers are bound by any election they make on their federal income tax return; this is so, however, to the extent California conforms to the IRC. (See R&TC, § 17024.5(e).)

personal income tax purposes. In short, IRC section 61 would have required appellants to include their 2020 coronavirus-related distributions on their 2020 Form 540 in their entirety, which is what happened here.

Appellants provide several arguments why there is reasonable cause to abate the late-payment penalty. Appellants contend they paid their full tax liability before it was legally due and payable. Appellants also contend there was no legal obligation to report the full amount of the “coronavirus-related distributions” in the 2020 taxable year. Finally, appellants contend FTB did not review appellants’ 2020 California income tax return until after their 2021 tax returns were due, which prejudiced appellants’ ability to amend their 2020 return—although it is not clear if appellants meant their 2020 federal return or 2020 Form 540, or both.

Based on the foregoing discussion regarding California’s non-conformity with section 2202(a)(5) of the CARES Act, appellants’ reasonable cause contentions are not persuasive. Although appellants timely filed their 2020 Form 540 within the automatic six-month extension period, they paid the tax of \$11,557 reported as due on that return after May 17, 2021, and it was, thus, late. According to the law as indicated above, the automatic six-month extension to file the return is not an extension to make a timely payment of tax. (*Appeal of J. Bannon*, 2023-OTA-096P.) Ignorance of the law does not excuse compliance with statutory requirements. (Cal. Code Regs., tit. 18, § 18567(a); *Appeal of Diebold, Incorporated* (83-SBE-002) 1983 WL 15389.) Therefore, FTB properly imposed the late payment penalty because appellants’ \$11,557 tax return payment was made nearly five months late when FTB received it on October 14, 2021.

Issue 2: Whether appellants established a basis to abate interest.

Interest must be assessed from the date a tax payment is due through the date that it is paid. (R&TC, § 19101.) Imposition of interest is mandatory; it is not a penalty but is merely compensation for a taxpayer’s use of money after it should have been paid to the state. (*Appeal of Gorin*, 2020-OTA-018P.) Interest can only be abated in certain limited situations when authorized by law. (R&TC, § 19101(a); *Appeal of Balch*, 2018-OTA-159P.) There is no reasonable cause exception to the imposition of interest. (*Appeal of Gorin, supra.*) OTA’s jurisdiction in an interest abatement case is limited to a review of whether FTB abused its discretion in determining whether to abate interest. (*Ibid.*) To show an abuse of discretion in

refusing to abate interest, the taxpayer must establish FTB exercised its discretion arbitrarily, capriciously, or without sound basis in fact or law. (*Ibid.*)

To obtain relief from interest, a taxpayer must qualify under one of three statutes: R&TC section 19104, 19112, or 21012.⁸ Appellants requested abatement due to an alleged error or delay by FTB, which is the basis for relief under R&TC section 19104. Under R&TC section 19104, FTB may abate interest related to a proposed deficiency assessment to the extent the interest is attributable in whole or in part to: (1) an unreasonable error or delay; (2) by an officer or employee of FTB; (3) in performing a ministerial or managerial act; and (4) which occurred after FTB contacted the taxpayer in writing regarding the proposed deficiency assessment, provided no significant aspect of that error or delay is attributable to the taxpayer. (R&TC, § 19104(a)(1), (b)(1); *Appeal of Gorin, supra.*)

On October 14, 2021, FTB received appellants' 2020 Form 540 and appellants' 2020 tax return payment of \$11,557.00. Two weeks later, on October 28, 2021, FTB issued a notice informing appellants it had imposed a late-payment penalty, plus interest, in connection with the 2020 tax return payment, resulting in a balance due of \$1,010.92. On November 12, 2021, FTB recorded receiving a \$1,010.92 payment from appellants.

Appellants argue that interest should be abated from May 17, 2021 through November 12, 2021. However, interest is not permitted by statute for the period before FTB first contacted appellants on October 28, 2021. Likewise, interest ceased accruing on November 12, 2021, when appellants paid the \$1,010.92 revised balance. Based on these facts, FTB did not abuse its discretion in refusing to abate interest during the period from October 28, 2021, to November 12, 2021. To the extent the two-week period between FTB's October notice and appellants' November response to that notice is a delay, the evidence shows the delay is not attributable to FTB, as it did not have control over when appellants decided to respond.

⁸ R&TC section 21012 relates to interest abatement when a taxpayer relies on written advice requested of FTB, which appellants have not alleged here. Furthermore, OTA does not have jurisdiction to review an FTB interest abatement determination made under R&TC section 19112, a section relating to extreme financial hardship. (*Appeal of Moy, 2019-OTA-057P.*)

HOLDINGS

1. Appellants have not established reasonable cause for paying their taxes late.
2. Appellants have not established a basis to abate interest.

DISPOSITION

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

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 Tommy Leung
 Administrative Law Judge

We concur:

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 Amanda Vassigh
 Administrative Law Judge

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 Asaf Kletter
 Administrative Law Judge

Date Issued: 10/25/2023