

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
D. BELFORD

) OTA Case No. 221011621
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OPINION

Representing the Parties:

For Appellant: Deepak B. Jain, Tax Senior Manager

For Respondent: Leoangelo C. Cristobal, Attorney

S. BROWN, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) 19324, D. Belford (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$5,434.16¹ for the 2019 tax year.²

Appellant waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

ISSUES

- 1. Whether appellant has established that the late-filing penalty should be abated.
- 2. Whether appellant has established that the estimated tax penalty should be abated.

FACTUAL FINDINGS

- 1. Appellant made estimated tax payments to FTB of \$59,300 on February 7, 2020, and \$48,700 on October 15, 2020, both for the 2019 tax year.

¹ While the claim for refund filed with FTB was for \$11,230.50, appellant’s Request for Appeal filed with the Office of Tax Appeals (OTA) seeks a refund of \$5,434.16; the Request for Appeal states that appellant’s previous calculation of the refund had been incorrect because it had erroneously omitted amounts for a late-payment penalty and interest.

² Appellant and his spouse filed their 2019 California Resident Income Tax Return using a filing status of married filing jointly, and both signed the claim for refund filed with FTB. However, appellant’s Request for Appeal filed with OTA identifies only appellant as the taxpayer, and is signed by appellant as the only taxpayer. Therefore, this appeal identifies appellant as the sole taxpayer.

2. Appellant did not timely file a California Resident Income Tax return for the 2019 tax year.³ On September 1, 2021, FTB notified appellant that it had received an estimated tax payment from appellant for the 2019 tax year but had not received appellant's tax return for that year, and requested that appellant file a return or explain why no return was required.
3. On October 15, 2021, appellant untimely filed a 2019 California Resident Income Tax Return, reporting a California adjusted gross income (AGI) of over one million dollars, total tax of \$184,977, tax withholding of \$80,755, estimated tax payments totaling \$108,000, plus a total of \$3,341 in penalties and interest.
4. Because appellant filed the return after the due date, FTB imposed a late-filing penalty of \$11,230.50. Additionally, FTB imposed an estimated tax penalty of \$2,791. On January 20, 2022, FTB issued to appellant an Income Tax Due Notice reflecting \$8,514.16 due for the 2019 tax year.
5. Appellant filed a claim for refund dated February 23, 2022, which requested abatement of the penalties.⁴ On March 4, 2022, FTB issued a Final Notice Before Lien and Levy showing a total of \$8,544.30 due for the 2019 tax year.⁵ In response, appellant made a payment to FTB of \$8,544.21.
6. In a Notice of Action dated July 1, 2022, FTB denied appellant's claim for refund.
7. This timely appeal followed.

DISCUSSION

Issue 1: Whether appellant has established reasonable cause to abate the late-filing penalty.

California imposes a penalty for the failure to file a return by its due date, unless the failure to file was due to reasonable cause and not due to willful neglect. (R&TC, § 19131.)

³ For the 2019 tax year, FTB postponed the original due date for individuals to file tax returns from April 15, 2020, to July 15, 2020, because of the COVID-19 pandemic, and allowed an automatic extension of time to October 15, 2020, if the return was filed by that date. (See <https://www.ftb.ca.gov/about-ftb/newsroom/newsreleases/2020-3-state-postpones-tax-deadlines-until-july-15-due-to-the-covid-19-pandemic.html>.)

⁴ Because this claim for refund was filed before the entire tax was paid, it was considered an informal claim for refund, which tolls the statute of limitations, but otherwise the claim is deemed filed when the tax is paid in full. (R&TC, § 19322.1.) Appellant's subsequent payment of the tax in full perfected the claim for refund.

⁵ The notice also listed an amount due for the 2020 tax year, which is not at issue in the present appeal.

Under R&TC section 19131, the late-filing penalty is calculated at 5 percent of the tax due for every month that the return is late, without any regard to extensions of time for filing, up to a maximum of 25 percent. (R&TC, § 19131(a).)

Appellant's 2020 tax return had an original due date of April 15, 2020. (R&TC, § 18566.) California law provides individual taxpayers an automatic six-month filing extension from the original statutory due date of April 15, but this extension is only allowed if a return is filed within the extension period. (R&TC, § 18567; Cal. Code Regs., tit. 18, § 18567.) Due to the COVID-19 pandemic, and pursuant to Internal Revenue Code (IRC) section 7508A, FTB postponed the filing due date for 2019 tax returns to July 15, 2020. Since a postponement granted pursuant to IRC section 7508A does not change the original statutory due date of the tax return, the COVID-19 filing postponement does not modify the automatic six-month extension provided by R&TC section 18567, which remains in reference to the original statutory due date of April 15, 2020, for the 2019 tax year. Unlike the automatic six-month extension, however, the COVID-19 postponement is allowed whether or not the individual taxpayer files by the postponement due date, here July 15, 2020. Therefore, the R&TC section 19131 late-filing penalty is calculated by reference to the postponement date of July 15, 2020.

When FTB imposes a late-filing penalty, the penalty is presumed to have been correctly imposed, and the burden of proof is on the taxpayer to show that reasonable cause exists to abate the penalty. (*Appeal of Xie*, 2018-OTA-076P.) To establish reasonable cause, the taxpayer must show that the failure to file timely returns occurred despite the exercise of ordinary business care and prudence, or that cause existed as would prompt an ordinarily intelligent and prudent businessperson to have so acted under similar circumstances. (*Appeal of Auburn Old Town Gallery, LLC*, 2019-OTA-319P.)

Appellant contends that FTB incorrectly calculated the amount of the late-payment penalty as \$11,230.50, and argues that the correct penalty amount was actually \$2,920.⁶ Here, appellant reported \$184,977 of total tax and \$188,755 of total payments on his return; however, appellant made timely payments totaling only \$140,055 (\$80,755 of withholding and a \$59,300 payment on February 7, 2020). While appellant made a payment of \$48,700 on October 15, 2020, the late-filing penalty applies and the penalty is calculated based on the

⁶ Appellant's calculation appears to rely on a return filing date of December 15, 2020, instead of the actual filing date of October 15, 2021.

postponement date of July 15, 2020, because he did not file a return by the extended due date (which was also October 15, 2020). (R&TC, § 19131.) Because appellant had tax due of \$44,922 (188,977 – 140,055 = 44,922) as of July 15, 2020, and the penalty is limited to a maximum of 25 percent, the late-payment penalty is 25 percent of the \$44,922 tax due, which equals \$11,230.50.⁷ Accordingly, the penalty was correctly calculated.

In the claim for refund filed with FTB, appellant alleged that his late filing was due to reasonable cause and was not due to reckless indifference or willful neglect. Appellant indicated that he had been waiting for a Schedule K-1 form to arrive and he did not receive it until October 13, 2020, which was close to the filing deadline. Appellant stated that it was time-consuming and difficult to assemble all of the information necessary to complete the tax return, and that he was diligent in locating and providing the information to his tax preparer to file the return as soon as possible.

Difficulty in obtaining documentation does not constitute reasonable cause for the late filing of a return. (*Appeal of Xie, supra.*) It is well established that taxpayers have an obligation to file timely returns with the best available information, and then to subsequently file an amended return, if necessary. (*Ibid.*) Accordingly, appellant has not met his burden of proof to abate the late-filing penalty for the 2019 tax year under R&TC section 19131.

Issue 2: Whether appellant has established reasonable cause to abate the estimated tax penalty.

California conforms to IRC section 6654 and imposes an estimated tax penalty for the failure to timely make estimated income tax payments. (R&TC, § 19136(a); IRC, § 6654.) The estimated tax penalty is like an interest charge in that it is calculated by applying the interest rate imposed on the amount of underpaid estimated tax. (IRC, § 6654; *Appeal of Johnson*, 2018-OTA-119P.) Estimated tax payments are generally required of persons who owe more than \$500 in tax, after applying income tax withholdings and credits. (R&TC, § 19136(c)(2).) R&TC section 19136.3 provides that in the case of an individual reporting AGI in excess of \$1 million, the required annual payment is 90 percent of the tax shown on the return for the taxable year. (R&TC, § 19136.3(a); IRC, § 6654(d)(2)(B).)

There is no general reasonable cause exception to the estimated tax penalty and the imposition of the estimated tax penalty is mandatory unless the taxpayer established that a

⁷ If the penalty was calculated at 5 percent for each month the return was late, the penalty amount would be significantly higher.

statutory exception applies. (*Appeal of Johnson, supra.*) The estimated tax penalty may be waived where the underpayment of tax was due to casualty, disaster, or other unusual circumstances such that imposition of the penalty would be against equity and good conscience; or where the underpayment is due to reasonable cause and not willful neglect, if the taxpayer either retired after having attained age 62 or became disabled in the taxable year for which the estimated tax payments were required to be made or in the previous taxable year. (IRC, § 6654(e)(3).)

Appellant has not presented any facts establishing that he meets the requirements of the exceptions provided in IRC section 6654(e)(3), and there is no evidence of such circumstances in the record. Consequently, appellant has not demonstrated that he is entitled to an abatement of the estimated tax penalty.

HOLDINGS

1. Appellant is not entitled to abatement of the late-filing penalty.
2. Appellant is not entitled to abatement of the estimated tax penalty.

DISPOSITION

FTB's action denying the claim for refund is sustained.

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Suzanne B. Brown

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Suzanne B. Brown
Administrative Law Judge

We concur:

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Sheriene Anne Ridenour

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Sheriene Anne Ridenour
Administrative Law Judge

DocuSigned by:

Natasha Ralston

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Natasha Ralston
Administrative Law Judge

Date Issued: 11/9/2023