

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
J. CHUNG AND) OTA Case No. 22029712
J. AHN)
_____)

OPINION

Representing the Parties:

For Appellants: Kerrin Liu, Attorney
For Respondent: Natasha S. Page, Tax Counsel IV

J. ALDRICH, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. Chung and J. Ahn (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants' claim for refund of \$25,822.42 for the 2020 tax year.

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

ISSUES

1. Whether appellants have established reasonable cause to abate the late payment penalty.
2. Whether appellants have established a basis upon which the estimated tax penalty may be abated.
3. Whether appellants have established a basis to abate interest.

FACTUAL FINDINGS

1. On July 14, 2021, appellants filed their 2020 California Resident Income Tax Return. Appellants reported taxable income and total tax. They also reported income tax withholdings and estimated tax payments of \$401,188. Appellants reported an overpayment of \$24,419. Then they self-imposed interest and penalties in the amount of \$18,082 and an estimated tax penalty of \$6,337. The estimated tax penalty was

- calculated on appellants' Underpayment of Estimated Tax by Individuals and Fiduciaries (Form 5805), which balanced out the return to \$0.
2. On July 21, 2021, FTB issued a Notice of Tax Return Change (NTRC), which modified the amount appellants reported as estimated payments. Instead of the estimated tax payments reported, FTB records showed estimated payments totaling \$52,784 and a payment made on July 9, 2021, of \$325,782.00. The NTRC included a late payment penalty of \$19,439.10, an estimate penalty of \$6,764.00, and interest of \$1,416.31.
 3. On August 4, 2021, appellants paid the full amount of \$25,822.41 required on the NTRC.
 4. On August 5, 2021, FTB received appellants claim for refund of \$25,822.41.
 5. On January 26, 2022, FTB denied appellants' claim for refund after it determined that appellants had not established reasonable cause for abating the late payment penalty or grounds to abate the estimated tax penalty.
 6. On February 8, 2022, appellants timely appealed to the Office of Tax Appeals (OTA).

DISCUSSION

Issue 1: Whether appellants have established reasonable cause to abate 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, taxpayers 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.) Taxpayers bear the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Ibid.*) Asserted lack of documentation or difficulty in calculating a tax liability does not, by itself, constitute reasonable cause for a late payment of tax. (*Ibid.*) Unsupported assertions are not

sufficient to satisfy a taxpayer's burden of proof. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.)

Appellants argue that FTB improperly calculated and imposed a late payment penalty for the 2020 tax year. Appellants assert that the COVID-19 pandemic made gathering their substantial tax documents extremely difficult and significantly delayed their ability to get all of their tax information to their preparer before the postponed deadline.¹ Appellants also argue that the COVID-19 pandemic was acknowledged as a qualified disaster by the IRS, and thus constitutes reasonable cause sufficient to set-aside the late payment penalty.

Here, FTB postponed the filing and payment deadline for the 2020 tax year from April 15, 2021, to May 17, 2021. Appellants had an outstanding balance on the due date of their return, and their payment was two months late. While appellants assert that the COVID-19 pandemic made gathering their tax documents extremely difficult, appellants have not provided any evidence to support that assertion. The fact that the COVID-19 pandemic occurred is insufficient to meet appellants' burden of proof. Instead, appellants would need to show what steps, if any, they took to address the difficulties they faced and how those steps establish a finding that appellants acted as prudent businesspersons under similar circumstances. OTA finds that appellants have failed to establish reasonable cause to abate the late payment penalty.

Issue 2: Whether appellants have established a basis upon which the estimated tax penalty may be abated.

Internal Revenue Code (IRC) section 6654 imposes an addition to tax, which is treated as a penalty, where an individual fails to timely pay estimated tax. The estimated tax penalty is similar to an interest charge in that it is calculated by applying the applicable interest rate to the underpayment of estimated tax. (See IRC, § 6654(a); R&TC, § 19136(b).) R&TC section 19136 generally conforms to IRC section 6654. Under R&TC section 19136, taxpayers who received income not subject to withholding are required to make payments of the estimated amount of their tax. As relevant to the tax year at issue, 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, June 15, and September 15 of the applicable tax year, and January 15 of the subsequent

¹ See <https://www.ftb.ca.gov/about-ftb/newsroom/2020-tax-year-extension-to-file-and-pay-individual.html#:~:text=Yes%2C%20California%20postponed%20the%20income,%2C%20to%20May%2017%2C%202021>

tax year. IRC section 6654 generally requires each of the four installments to be 25 percent of the required annual payment. The required annual payment is generally the lesser of 90 percent of the tax shown on the current year or 100 percent of the tax shown on the prior year return. (IRC, § 6654(d)(1)(B).) California modified the requirements of IRC section 6654 and requires that the first required installment is 30 percent of the required annual payment; the second required installment is 40 percent of the required annual payment; the third required installment is zero; and the fourth required installment is 30 percent of the required annual payment. (R&TC, § 19136.1(a)(2).)

The estimated tax penalty is mandatory unless the taxpayer establishes that an exception applies. (*Appeal of Saltzman*, 2019-OTA-070P; and *Appeal of Johnson*, 2018-OTA-119P.) A statutory exception can be found in IRC section 6654(e)(3)(A), which 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.”²

Appellants claim that they timely paid their estimated taxes for the 2020 tax year. Appellants also contend that the COVID-19 pandemic arises to the type of unforeseen circumstances, which was beyond their control, and justifies the abatement of the estimated tax penalty. Appellants assert that the COVID-19 pandemic made gathering their substantial tax documents extremely difficult and significantly delayed their ability to get all of their tax information to their preparer before the deadline. Furthermore, appellants emphasize that the COVID-19 pandemic was acknowledged as a qualified disaster by the IRS; and thus, constitutes reasonable cause sufficient to abate the estimated tax penalty. FTB counters that while the pandemic was an unusual circumstance, it does not rise to the level of being “against equity good conscience.”

Here, the evidence shows that appellants made estimated payments on July 15, 2020, and September 16, 2020. The sum of these payments was significantly less than the required annual payment amount. Based on the record, OTA finds that FTB did not err in its imposition of the estimated tax penalty. Therefore, OTA must examine whether the exception found in IRC section 6654(e)(3)(A) applies.

² Another exception can be found in IRC section 6654(e)(3)(B). Here, however, there is no evidence or argument that this exception is applicable.

While the COVID-19 pandemic may qualify as an unusual circumstance for the tax year at issue, OTA must also examine whether appellants have met their burden to prove that the imposition of the estimated tax penalty is against equity and good conscience. Neither the IRC nor the R&TC defines the phrase “against equity and good conscience.” In *Trimmer v. Commissioner*, 148 T.C. 334, the Tax Court considered a similar phrase, “against equity or good conscience” in its analysis of IRC section 402(c)(3)(B). The Tax Court cited to the court in *Groseclose v. Bowen*, 809 F.2d 502 (8th Cir. 1987), which noted that the phrase against equity and good conscience is “‘language of unusual generality’, and that such broad language ‘necessarily anticipate[s] that the trier of fact, . . . will draw upon precepts of justice and morality as the basis for his ruling.’” (*Trimmer v. Commissioner*, 148 T.C., *supra*, at pp. 361-362.) The unique factual circumstances faced by appellants in the context of an unusual circumstance (i.e., the COVID-19 pandemic) must be such that the imposition of the estimated penalty offends the precepts of justice and morality. Here, however, the appellants have not established a nexus between the unusual circumstance and appellants’ ability to make timely estimated payments. With respect to appellants’ assertion that the COVID-19 pandemic made gathering the required documents difficult, appellants have not provided sufficient explanation or any evidence to support that assertion. Accordingly, OTA finds that appellants have not established that the statutory exception in IRC section 6654(e)(3)(A) applies.

Issue 3: Whether appellants have 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 it is compensation for appellants’ use of money after it should have been paid to the state. (*Appeal of Moy*, 2019-OTA-057P.) There is no reasonable cause exception to the imposition of interest, and it is mandatory except where abatement is authorized under the law. (*Ibid.*)

Appellants argue that since they should not be liable for the assessed 2020 late payment and estimated tax penalties due to reasonable cause, they should not be liable for the interest on the stated penalties.


Based on OTA’s analysis of the late payment and estimated tax penalties above, OTA finds that FTB properly assessed interest, and appellants have not established a basis to waive it.

HOLDINGS

1. Appellants have not established reasonable cause to abate the late payment penalty.
2. Appellants have not established a basis to abate the estimated tax penalty.
3. Appellants have not established a basis to abate interest.

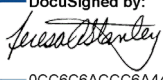
DISPOSITION

FTB’s denial of appellants’ claim for refund is sustained.


DocuSigned by:

 48745BB806914B4...

Josh Aldrich
 Administrative Law Judge

We concur:

DocuSigned by:

 0CC6C6ACCC8A44D

Teresa A. Stanley
 Administrative Law Judge

DocuSigned by:

 67F043D83EF547C...

Sheriene Anne Ridenour
 Administrative Law Judge

Date Issued: 5/10/2023