

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
S. KAUR AND) OTA Case No. 230513360
W. H. SWARTWOOD)
_____)

OPINION

Representing the Parties:

For Appellants: S. Kaur

For Respondent: Katherine Gan, Graduate Legal Assistant

T. Leung, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, S. Kaur and W. H. Swartwood (appellants) appeal an action by the Franchise Tax Board (respondent) denying appellants’ claim for refund of \$796.45 for the 2021 taxable year.

Appellants 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, § 30209.05.) Appellants waived their right to an oral hearing; therefore, this matter is being decided based on the written record.

ISSUE

Whether there was reasonable cause for appellants to pay their 2021 taxes late.

FACTUAL FINDINGS

1. Appellants did not pay their 2021 California personal income tax until October 2022. Consequently, respondent imposed a late payment penalty.
2. Appellants paid the penalty and claimed a refund therefor; respondent denied the refund due to lack of reasonable cause.

DISCUSSION

A late payment penalty is imposed when a taxpayer fails to pay the amount shown as due on the return by the date prescribed for the payment of the tax. (R&TC, § 19132.) Generally, the date prescribed for the payment of tax is the due date of the return (without regard to extensions of time for filing). (R&TC, § 19001.) Here, it is undisputed that appellants failed to timely pay their tax liability and, therefore, the penalty was properly imposed and computed.

The late payment penalty may be abated if the taxpayer shows 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).) Willful neglect is a conscious, intentional failure to do something that is required or to avoid doing something that is prohibited, or a reckless indifference to the requirement or prohibition. (*Appeal of Porreca*, 2018-OTA-095P.) In this appeal, there is no allegation by respondent of willful neglect on the part of appellants. To establish reasonable cause for a late payment of tax, a taxpayer must show that the failure to make a timely payment occurred despite the exercise of ordinary business care and prudence. (*Appeal of Rougeau*, 2021-OTA-335P.) The taxpayer bears the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Ibid.*) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Scanlon*, 2018-OTA-075P.)

Illness may establish reasonable cause where the taxpayer presents credible and competent proof that the circumstances of the illness prevented the taxpayer from complying with the law. (*Appeal of Triple Crown Baseball LLC*, 2019-OTA-025P.) However, if difficulties simply cause the taxpayer to sacrifice the timeliness of one aspect of the taxpayer's affairs to pursue other aspects, the taxpayer must bear the consequences of that choice. (*Ibid.*; *Appeal of Head and Feliciano*, 2020-OTA-127P.)

Inability to pay the tax due to financial hardship may also establish reasonable cause to abate the late payment penalty. (*Appeal of Triple Crown Baseball LLC*, *supra*; see Internal Revenue Code (IRC), § 6651; Treas. Reg. § 301.6651-1(c).) Reasonable cause based on financial hardship is explained in federal Treasury Regulation section 301.6651-1(c)(1), which provides that the taxpayer must show the exercise of ordinary business care and prudence, and that the taxpayer was either unable to pay the tax or would suffer an undue hardship by paying

by the due date.¹ Treasury Regulation section 301.6651-1(c)(1) further provides that all the facts and circumstances will be considered, including the amount and nature of the taxpayer's expenditures in light of the income (or other amounts) the taxpayer could, at the time of such expenditures, reasonably expect to receive prior to the date prescribed for the payment of the tax. Thus, taxpayers can prove ordinary business care and prudence by showing reasonable efforts were made to conserve sufficient assets in marketable form to satisfy the tax liability. (Treas. Reg. § 301.6651-1(c)(1).) Additionally, "undue hardship" is defined in Treasury Regulation section 1.6161-1(b) as meaning "more than an inconvenience to the taxpayer."

Here, appellants assert that reasonable cause exists because their family contracted COVID-19 and suffered through other illnesses/injuries which required care. During this appeal, respondent asked appellants to substantiate these claims, which they did not do. Thus, no relief can be granted based on illness.

Appellants also claim that they relied on their escrow company to withhold the proper amount of tax and that this was the first time they had incurred a penalty. It is well settled that a taxpayer's reliance on an agent, such as an accountant, to file a return or pay tax by the due date is not reasonable cause because a taxpayer has a personal, non-delegable obligation to meet statutory deadlines. (See *U.S. v Boyle* (1985) 469 U.S. 241, 252; *Appeal of Quality Tax & Financial Services, Inc.*, 2018-OTA-130P.) Additionally, although the IRS uses a "First Time Abate" program through which the IRS abates first-time timeliness penalties if a taxpayer has timely filed returns and paid taxes due for the preceding three years, California had no comparable program for the 2020 taxable year for abating late filing penalties based solely on a prior good filing history.² (*Appeal of Xie*, 2018-OTA-076P.) Instead, for the 2021 taxable year, the law provided that the California late filing penalty shall apply unless reasonable cause is shown. (*Ibid.*)

¹ Although there are no FTB regulations interpreting R&TC section 19132, that section is patterned after IRC section 6651. Therefore, the interpretations of, and effect given to, the federal provision by the federal courts and administrative bodies are relevant in determining the proper construction of the California statute. (*Andrews v. Franchise Tax Bd.* (1969) 275 Cal.App.2d 653, 658; *Rihn v. Franchise Tax Bd.* (1955) 131 Cal.App.2d 356, 360; *Appeal of Rougeau*, *supra.*)


² R&TC section 19132.5(a), effective for taxable years beginning on or after January 1, 2022, allows an individual taxpayer to request a one-time abatement of a timeliness penalty. As the 2021 taxable year is at issue here, this newly enacted law is inapplicable.

HOLDING

Appellants failed to show that they had reasonable cause to pay their 2021 taxes late.

DISPOSITION

Respondent's action is sustained.

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Tommy Leung
Administrative Law Judge

Date Issued: 12/8/2023