

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
D. FRETWELL AND)
S. STEELE)
)
)
)
)

OTA Case No. 220911448

OPINION

Representing the Parties:

For Appellants: D. Fretwell

For Respondent: Hanna Cho, Attorney

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, D. Fretwell and S. Steele (appellants) appeal an action by the Franchise Tax Board (respondent) denying appellants’ claim for refund of \$909.16 for the 2020 taxable year.

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

ISSUES

1. Have appellants established reasonable cause for paying their 2020 taxes late?
2. Is interest abatement warranted?

FACTUAL FINDINGS

1. Appellants made a \$14,080 payment for their 2020 taxes (which was due on May 17, 2021¹) on July 27, 2021.
2. Consequently, respondent imposed a late payment penalty, which appellants paid.
3. Appellants filed a claim for refund of the late payment penalty, which respondent denied.

¹ In response to COVID-19, FTB postponed the 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-for-individuals-postponed-until-may-17-2021.html>.)

4. The IRS also imposed a 2020 late payment penalty on appellants, which was subsequently abated by it pursuant to the IRS's first-time abate program.

DISCUSSION

Issue 1: Have appellants established reasonable cause for paying their 2020 taxes late?

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.) 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 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.² 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 COVID-19 caused office and school closures, resulting in hardship and scheduling problems for both them and their CPA. However, appellants do not allege that either illness or financial hardship caused them to pay their taxes late. Instead, appellants refer to the IRS's "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. For the 2020 taxable year, California had no comparable program for abating late filing penalties based solely on a prior good filing history.³ (*Appeal of Xie*, 2018-OTA-076P.) Instead, for the 2020 tax year, the law provided that the California late filing penalty shall apply unless reasonable cause is shown. (*Ibid.*)

Issue 2: Is interest abatement warranted?

The imposition of interest is mandatory and accrues on a tax deficiency regardless of the reason for the underpayment. (R&TC, § 19101(a); *Appeal of Balch*, 2018-OTA-159P.) There is no reasonable cause exception to the imposition of interest. (*Appeal of Moy*, 2019-OTA-057P.) Therefore, to obtain interest relief appellants must qualify under R&TC section 19104 (pertaining to unreasonable error or delay by respondent in the performance of a ministerial or

² Although there are no FTB regulations interpreting R&TC section 19132, that section is patterned after Internal Revenue Code 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. (*Appeal of Rougeau, supra*; *Andrews v. Franchise Tax Bd.* (1969) 275 Cal.App.2d 653, 658; *Rihn v. Franchise Tax Bd.* (1955) 131 Cal.App.2d 356, 360.)

³ R&TC section 19132.5(a), effective for tax years beginning on or after January 1, 2022, allows an individual taxpayer to request a one-time abatement of a timeliness penalty. As the 2020 tax year is at issue here, this newly enacted law is inapplicable.


managerial act), 19112 (pertaining to extreme financial hardship caused by significant disability or other catastrophic circumstance), or 21012 (pertaining to reasonable reliance on the written advice of respondent). (*Ibid.*) Appellants did not allege, and the record does not reflect, that any of these waiver provisions are applicable here. Therefore, there is no basis for abating interest.

HOLDINGS

1. Appellants failed to establish reasonable cause for paying their taxes late.
2. Interest abatement is not warranted.


DISPOSITION

Respondent’s action is sustained.


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 Tommy Leung
 Administrative Law Judge

We concur:

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 Veronica I. Long
 Administrative Law Judge

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 Richard Tay
 Administrative Law Judge

Date Issued: 12/21/2023