

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
J. PARKER) OTA Case No. 220510399
)
)
)
)
)

OPINION

Representing the Parties:

For Appellant: Daniel Forgy, Tax Appeals Assistance Program

For Respondent: Josh Ricafort, Attorney

For Office of Tax Appeals: James Filling, Graduate Student Assistant

A. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. Parker (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$736.44 plus interest for the 2020 tax year.

Appellant 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, § 30209.1.) Office of Tax Appeals (OTA) Administrative Law Judge Andrea L.H. Long held an oral hearing for this matter electronically on June 20, 2023. At the conclusion of the hearing, the record was held open to allow the parties to submit additional briefing and evidence. On September 22, 2023, OTA closed the record, and this matter was submitted for an opinion.

ISSUES

1. Whether appellant has established reasonable cause to abate the late payment penalty.
2. Whether appellant has established a basis to abate the estimated tax penalty.

FACTUAL FINDINGS

1. Appellant timely filed her 2020 California tax return on October 15, 2021.¹ Appellant reported a total tax of \$7,218 and estimated tax payments of \$8,026. Appellant self-assessed an estimated tax penalty of \$157 and requested a refund of \$651. However, FTB has no record of receiving any payments from appellant.
2. On October 28, 2021, FTB sent appellant a Notice of Tax Return Change that revised appellant's payment amount from \$8,026 to \$0, citing an absence of estimated tax payments. FTB imposed a late payment penalty of \$577.44 and an estimated tax penalty of \$159, plus interest.
3. On November 12, 2021, appellant paid her tax liability, penalties, and interest. Appellant subsequently filed a claim for refund, which FTB denied.
4. This timely appeal followed.

DISCUSSIONIssue 1: Whether appellant has established reasonable cause to abate the late payment penalty.

R&TC section 19132 provides that a late payment penalty is imposed when a taxpayer fails to pay the amount shown as due on the return on or before the due date of the return. 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.) For the 2020 tax year, FTB postponed the filing and payment due date from April 15, 2021, to May 17, 2021.² FTB properly imposed the late payment penalty because appellant did not satisfy her 2020 tax liability until November 12, 2021.

The late payment penalty may be abated if the taxpayer establishes that the failure to make a timely tax payment was due to reasonable cause and not willful neglect. (R&TC, § 19132(a)(1).) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof. (*Appeal of Moren*, 2019-OTA-176P.)

¹ Although returns are generally due on April 15 of the following tax year, California allows an automatic six-month extension to file a return within six months of the original due date. No written request is required, and the granting of the extension is conditioned solely on the filing of a return within the automatic extension period. (R&TC, § 18567(a)(1); Cal. Code Regs., tit. 18, § 18567(a).)

² See COVID-19 Extension, <https://www.ftb.ca.gov/about-ftb/newsroom/2020-tax-year-extension-to-file-and-pay-individual.html>.

2024-OTA-107SCP Nonprecedential

To establish reasonable cause for a late payment of tax, a taxpayer must show that the late payment occurred despite the exercise of ordinary business care and prudence. (*Appeal of Scanlon*, 2018-OTA-075P.) This requires a taxpayer to monitor his or her bank account to ensure that payments have in fact been timely made. (*Ibid.*) The failure to timely remit the balance due on a tax liability caused by an oversight does not, by itself, constitute reasonable cause. (*Appeal of Friedman*, 2018-OTA-077P.)

To establish reasonable cause based on reliance on a tax professional, a taxpayer must show that he or she reasonably relied on the tax professional for substantive tax advice. (*Appeal of Summit Hosting LLC*, 2020-OTA-216P, citing *U.S. v. Boyle* (1985) 469 US. 241, 251.) In addition, the taxpayer must show that he or she relied on a tax professional with competency in the subject tax law, and the advice given by that tax professional was based on the taxpayer's full disclosure of relevant facts and document. (*Ibid.*) A taxpayer's reliance on an expert cannot serve as a substitute for compliance with an unambiguous statute. (*Ibid.*)

Appellant argues that she had reasonable cause for not timely paying her 2020 taxes in time because she relied on her tax preparer to timely submit payment. In support of her position, appellant relies on *Rohrbaugh v. U.S.* (7th Cir. 1979) 611 F.2d 211 (*Rohrbaugh*) for the proposition that reliance on the advice of counsel can constitute reasonable cause when the taxpayer is unfamiliar with tax law, the taxpayer fully discloses all relevant facts to the attorney, and the taxpayer has otherwise exercised ordinary reasonable care and prudence. Appellant argues that like the taxpayer in *Rohrbaugh*, she was unfamiliar with the tax law, made full disclosure to her tax preparer, and relied on her tax preparer to remit her taxes in a timely fashion.

Appellant's reliance on *Rohrbaugh*, *supra*, 611 F.2d 211, is misplaced. First, appellant has not demonstrated that her tax preparer provided substantive advice that caused her to fail to timely pay taxes for the 2020 tax year. Appellant has not provided any evidence, such as correspondence, email, or written opinions by her tax preparer discussing the tax preparer's analysis or conclusion as to appellant's tax payment requirements. Appellant only asserts that she relied on her tax preparer to timely pay her taxes. The fact that appellant's tax preparer was expected to attend to appellant's timely tax payment does not relieve appellant of the duty to comply with her obligation to timely pay her taxes. (*Boyle*, *supra*, 469 U.S. at p. 249; *Appeal of Fisher*, 2022-OTA-337P.)

2024-OTA-107SCP Nonprecedential

Second, *Rohrbaugh, supra*, 611 F.2d 211, is factually distinguishable from the instant appeal. Unlike the taxpayer in *Rohrbaugh* who, as the administrator of her deceased father's estate, was unaware that she needed to file an estate tax return, appellant was well aware that her 2020 tax payment was due no later than May 17, 2021. Additionally, the significance of *Rohrbaugh* has been diminished by the subsequent decision in *Boyle, supra*, 469 US. 241, which is cited above.³ Courts have consistently applied the bright-line rule set forth in *Boyle*, even in circumstances where a taxpayer acted prudently in its dealings with its agent or employee. (See, e.g., *Kimdun Inc. v. U.S.* (C.D.Cal. 2016) 202 F.Supp.3d 1136 [finding that reliance on a payroll service was not sufficient to establish reasonable cause under *Boyle*]; *Conklin Bros. of Santa Rosa, Inc. v. U.S.* (9th Cir. 1993) 986 F.2d 315 [finding that reliance on the taxpayer's controller was not sufficient to establish reasonable cause].)

Appellant also contends that she believed her tax preparer remitted an electronic payment request on May 17, 2021, and that she diligently monitored her bank account. Appellant states that she noticed in June 2021 that the state payment had not been withdrawn from her bank account. Appellant asserts that she contacted her tax preparer, who assured her by stating that the state was slow in processing tax payments and other taxpayers were experiencing similar delays due to the COVID-19 pandemic. Appellant provides copies of emails that she sent to her tax preparer between June 6, 2021, and November 2, 2021, in which she asks about the status of her California tax payment.

However, it is unclear from the record when appellant believed she made any tax payments and if she began monitoring her bank account soon after she attempted to make any payments. Appellant reported on her return that she made estimated tax payments of \$8,026, which suggests that appellant believed these payments were made prior to May 17, 2021, the due date of the tax return. Likewise, based on this belief, appellant thought she overpaid her taxes and requested a refund of \$651 on her return filed on October 15, 2021. This indicates that on October 15, 2021, appellant was unaware that tax payments of \$8,026 were in fact not remitted to FTB. Appellant should have monitored her bank account when she attempted to make her tax payments to FTB sometime before May 17, 2021.

³ *Boyle, supra*, 469 U.S. 241 did not overrule *Rohrbaugh, supra*, 611 F.2d 211, but noted that the *Rohrbaugh* holding was narrowly drawn to its facts and it stressed that the question of reasonable cause was an issue to be determined on a case-by-case basis.

2024-OTA-107SCP Nonprecedential

Appellant's email correspondence between her and her tax preparer are also unconvincing. The emails begin on June 6, 2021, which is 20 days after tax payments were due on May 17, 2021. There is nothing in the record to indicate what efforts appellant made between May 17, 2021, and June 6, 2021, or what caused the delay into her inquiry.

Appellant also refers to her good compliance history as an additional ground for abating the penalty. However, OTA can only grant relief where the law specifically allows. (See *Appeal of Xie*, 2018-OTA-076P.) There is nothing in the law that allows OTA to abate the late payment penalty based on past compliance history for the 2020 tax year.⁴ Accordingly, appellant has not demonstrated reasonable cause to abate the late payment penalty.

Issue 2: Whether appellant has established a basis to abate the estimated tax penalty.

Internal Revenue Code (IRC) section 6654 imposes an addition to tax, which is treated as and often referred to as a penalty, when a taxpayer fails to timely make estimated income tax payments. Subject to certain exceptions not relevant here, R&TC section 19136 conforms to IRC section 6654 but modifies the due dates and amounts for payment of estimated taxes. For the 2020 tax year, taxpayers must remit California estimated tax payments on or prior to April 15, 2020, June 15, 2020, and January 15, 2021. (R&TC, § 19126.1(a)(2); IRC, § 6654(c)(2).) The estimated tax penalty is similar to an interest charge in that it is calculated by applying the applicable interest rate to the underpaid estimated tax. (See IRC, § 6654(a); R&TC, § 19136(b); *Appeal of Johnson*, 2018-OTA-119P.) FTB properly imposed the estimated tax penalty because appellant failed to timely make her required estimated tax payments on or before the due dates of April 15, 2020, June 15, 2020, and January 15, 2021.

Unlike the late payment penalty discussed above, abatement of the estimated tax penalty is not available based solely on a finding of reasonable cause. (*Appeal of Saltzman*, 2019-OTA-070P.) The estimated tax penalty is mandatory unless a taxpayer shows that a statutory exception applies. (*Appeal of Johnson, supra.*) Under IRC section 6654(e)(3)(A), an estimated tax penalty may be waived if “by reason of casualty, disaster, or other unusual circumstances the

⁴ R&TC section 19132.5, 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. Because the 2020 tax year is at issue here, this newly enacted provision is inapplicable.

2024-OTA-107SCP
Nonprecedential

imposition of [an estimated tax penalty] would be against equity and good conscience.”⁵ The phrase “casualty, disaster, or other unusual circumstances” generally refers to unexpected events that cause hardship or loss such that, due to the circumstances, it would be inequitable to impose the estimated tax penalty. (*Appeal of Saltzman*, 2019-OTA-070P.) The exception for unusual circumstances is considerably narrower than reasonable cause. (*Appeal of Mazdyasni*, 2018-OTA-049P, citing Internal Revenue Service Field Service Advisory (June 2, 1994) 1994 WL 1725487.) The legislative history of IRC section 6654(e)(3)(A) indicates that waiver may be appropriate when an estimated tax payment was not made due to the death or serious illness of the taxpayer. (*Ibid.*)

Appellant does not dispute the imposition or the calculation of the estimated tax penalty. Instead, appellant argues that her mother’s illness and death fall under the exception for unusual circumstances set forth in IRC section 6654(e)(3)(A). Appellant recounts that her mother became unexpectedly ill in July 2021 and died soon afterwards. Appellant contends that her mother’s subsequent passing and the administration of her mother’s estate affected her ability to monitor her bank account to determine whether the tax payment of \$8,026 was electronically withdrawn and timely remitted to FTB.

Although OTA is sympathetic to appellant’s situation, these events occurred at least five months after the estimated tax payments were due. Accordingly, the estimated tax penalty cannot be waived.

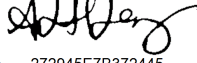
⁵ A second exception is found in IRC section 6654(e)(3)(B), which states that the estimated tax penalty will not be imposed if (i) during the applicable tax year or the preceding tax year, the taxpayer either retired after attaining the age of 62 or became disabled, and (ii) the underpayment was due to reasonable cause and not willful neglect. Appellant does not assert, and there is no evidence showing, that she meets this second exception.

HOLDINGS

1. Appellant has not established reasonable cause to abate the late payment penalty.
2. Appellant has not established a basis to abate the estimated tax penalty.

DISPOSITION

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

DocuSigned by:

272945E7B372445...

Andrea L.H. Long
Administrative Law Judge

Date Issued: 12/19/2023