

FACTUAL FINDINGS

1. On May 15, 2021, appellant untimely filed his 2019 California income tax return. Appellant reported tax of \$29,525. After applying withholding credits of \$16,829, appellant reported a tax due of \$12,696, which appellant paid on May 15, 2021. Appellant did not remit any estimated tax payments for the 2019 tax year.
2. Respondent processed appellant's return and issued a Notice of Tax Return Change – Revised Balance, which informed appellant that respondent imposed a late filing penalty of \$3,174 and an estimated tax penalty of \$380, plus interest.
3. After respondent issued two collection notices, appellant made a payment of \$4,149.54. Respondent transferred an overpayment of \$21.32 from appellant's 2020 tax year to appellant's 2019 tax year, which satisfied appellant's outstanding balance for tax year 2019.
4. Appellant thereafter filed a claim for refund. Respondent denied the claim.
5. This timely appeal followed.

DISCUSSION

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

A taxpayer filing on a calendar year basis must file a return by April 15th following the close of the calendar year. (R&TC, § 18566.) For the 2019 tax year, the filing deadline was postponed to July 15, 2020.² Alternatively, a taxpayer may file a return for tax year 2019 on or before the automatic extended due date of October 15, 2020. (Cal. Code Regs., tit. 18, § 18567.) R&TC section 19131 imposes a late filing penalty when a taxpayer fails to file a return on or before its due date, unless the taxpayer establishes that the late filing was due to reasonable cause and was not due to willful neglect. When respondent imposes a penalty, the law presumes that respondent properly imposed the penalty. (*Appeal of Xie*, 2018-OTA-076P.) Appellant filed his 2019 California income tax return after the due date of July 15, 2020. Therefore, respondent properly imposed a late filing penalty.

² See R&TC, § 18572; Franchise Tax Board, *State Postpones Tax Deadlines Until July 15 Due to COVID-19 Pandemic*, news release (Mar. 18, 2020) <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2020-3-state-postpones-tax-deadlines-until-july-15-due-to-the-covid-19-pandemic.html>.

To establish reasonable cause, the taxpayer must show that the failure to file a timely return occurred despite the exercise of ordinary business care and prudence, or that such cause existed as would prompt an ordinarily intelligent and prudent businessperson to have so acted under similar circumstances. (*Appeal of Head and Feliciano*, 2020-OTA-127P.) A taxpayer must provide credible and competent evidence supporting a claim of reasonable cause to overcome the presumption of correctness attached to the penalty. (*Appeal of Xie, supra.*) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.)

Appellant states that during 2019 and 2020, he was working on his own startup company, he was unpaid, and he was living off of his savings. He asserts that due to the COVID-19 pandemic, he was forced to shut down his company and paying taxes was the last thing on his mind. Appellant further asserts that he did not have time to read the Revenue and Taxation Code and did not know that filing his return late would result in a penalty. Appellant argues that respondent should not be wasting time going after him, because he only filed his return five months late, and respondent should be using its resources to collect taxes from billionaires.³

Appellant's reasons for failing to file his return do not establish reasonable cause. Ignorance of the law is not reasonable cause for failure to comply with statutory requirements. (*Appeal of Porreca*, 2018-OTA-095P.) Appellant's failure to acquaint himself with the requirements of California tax law does not exemplify ordinary business care and prudence. (*Ibid.*) Regarding appellant's contention that he did not have time to read the Revenue and Taxation Code does, this also fails to establish reasonable cause. If the difficulties of following the law simply caused appellant to sacrifice the timeliness of one aspect of his affairs to pursue other aspects, appellant must bear the consequences of that choice. (*Triple Crown Baseball LLC*, 2019-OTA-025P.) Appellant has therefore not established reasonable cause for his failure to timely file his 2019 return.

Issue 2: Whether appellant as established a legal 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

³ It is noted that the record indicates appellant filed his return on May 15, 2021, which is 10 months after the July 15, 2020 deadline.

IRC section 6654 but modifies the due dates and amounts for payment of estimated taxes. For the 2019 tax year, the taxpayer must have remitted California estimated tax payments on or prior to April 15, 2019, June 15, 2019, and January 15, 2020. (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.) Respondent properly imposed the estimated tax penalty because appellant failed to make the required estimated tax payments on or before the due dates.

Unlike the late filing 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 imposition of [an estimated tax penalty] would be against equity and good conscience.”⁴ 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, supra.*) 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.)

Appellant asserts that his income was the result of capital gains from the stock sales and argues that he could not make estimated tax payments because the gains and losses were not final until the end of the year. Appellant asserts there was no way to estimate his estimated tax payments.

A large financial gain is not the type of unexpected event qualifying for relief. (*Appeal of Johnson, supra.*) The estimated tax penalty has been waived by the IRS in situations “where a tax law change, disaster, required accounting method change, or a Government action or inaction caused extreme difficulty in estimating the tax.” (*Appeal of Mazdyasni, supra.*) However, a

⁴ 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 he meets this second exception.

financial transaction resulting in taxable gain, no matter how complex, is not an unusual circumstance warranting penalty abatement. (*Ibid.*) In addition, difficulty in estimating the tax is not an unusual circumstance for purposes of abating the estimated tax penalty within the meaning of IRC section 6654(e). (*Ibid.*) Thus, there is no basis to abate the estimated tax penalty.

Issue 3: Whether appellant has established a legal basis to abate interest.

Imposing interest on a tax deficiency is mandatory. (R&TC, § 19101(a).) Interest is not a penalty but is compensation for the taxpayer's use of money after it should have been paid to the state, and it can only be abated in certain limited situations when authorized by law. (*Appeal of Moy*, 2019-OTA-057P.) There is no reasonable cause exception to the imposition of interest. (*Ibid.*)

OTA has jurisdiction to determine whether a taxpayer is entitled to the abatement of interest under R&TC sections 19104 and 21012. (*Appeal of Moy, supra.*) Appellant does not argue that abatement based on 19104 or 21012 applies to this appeal. Instead, appellant poses the question whether respondent pays him interest when he overpays taxes in a given year.⁵ Appellant seems to imply that there is some unfairness to the principle that he must pay interest to California for his use of money after it should have been paid to the state.

This argument is unavailing. OTA does not have jurisdiction to invalidate R&TC section 19101 or determine that it is unenforceable. (Cal. Code Regs., tit. 18, § 30104(a).) Thus, appellant has not established a basis for interest abatement.

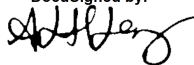
⁵ It is noted that R&TC section 19340 provides that, in certain circumstances, interest shall be allowed and paid on overpayments of tax.

HOLDINGS

1. Appellant has not established reasonable cause to abate the late filing penalty.
2. Appellant has not established a legal basis to abate the estimated tax penalty.
3. Appellant has not established a legal basis to abate interest.

DISPOSITION

Respondent's action is sustained.

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Andrea L.H. Long
Administrative Law Judge

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