

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 220610564
F. JOHNSON AND)
H. JOHNSON)
_____)

OPINION

Representing the Parties:

For Appellants: Michael Luby, Attorney

For Respondent: Topher Tuttle, Attorney

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, F. Johnson and H. Johnson (appellants) appeal an action by the Franchise Tax Board (respondent) denying appellants' claim for refund of \$25,183 for the 2016, 2017, and 2018 taxable years (taxable years at issue).

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

ISSUES

1. Whether the late payment penalties for the taxable years at issue should be abated.
2. Whether the underpayment of estimated tax penalties for the taxable years at issue should be abated.

FACTUAL FINDINGS

1. Appellants did not timely pay their taxes for the taxable years at issue,¹ and respondent imposed \$25,183² in late payment and underpayment of estimated tax penalties as a result thereof.

¹ For each of the taxable years at issue, after the respective extended due dates for those tax returns, appellants made installment tax payments.

² This amount is not in dispute; thus, its computation will not be discussed.

2. Appellants paid the \$25,183, and filed a refund claim, which respondent denied.

DISCUSSION

Issue 1: Late Payment Penalties.

The late payment penalty may be abated where the failure to make a timely payment was due to reasonable cause and not willful neglect. (R&TC, § 19132(a)(1).) To establish reasonable cause, the taxpayer must show that the failure to timely pay occurred despite the exercise of ordinary business care and prudence. (*Appeal of Scanlon*, 2018-OTA-075P.)

Respondent's determination is presumed to be correct, and the taxpayer has the burden of proving otherwise. (*Appeal of Davis and Hunter-Davis*, 2020-OTA-182P.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Ibid.*) In the absence of credible, competent, and relevant evidence showing error, respondent's determinations must be upheld. (*Ibid.*) The burden of proof requires proof by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219.) The law provides that taxpayers have a non-delegable obligation to pay their taxes by the due date; thus, a taxpayer's reliance on an agent, such as an accountant, to pay by the due date is not reasonable cause. (See *United States v. Boyle* (1985) 469 U.S. 241, 252; *Appeal of Triple Crown Baseball, LLC*, 2019-OTA-025P.)

Here, appellants assert that their tax preparer, who is appellant-husband's brother, committed embezzlement and fraud. However, there is no documentary evidence to substantiate the tax preparer's alleged misdeeds, and appellants have not explained how such acts contributed to their paying their taxes late. The evidence does show that appellants made installment payments for the 2016 taxable year after the extended filing date of the return, and continued this practice for the 2017 and 2018 taxable years. A reasonable person would have taken steps to correct this for the 2017 and 2018 taxable years, such as increasing their estimated tax payments and/or increasing their tax withholdings; instead, appellants apparently allowed this practice to continue. Thus, reasonable cause was not established.

Issue 2: Underpayment of Estimated Tax Penalties.

Internal Revenue Code (IRC) section 6654 imposes an addition to tax, which is treated and often referred to as a penalty, when an individual fails to timely pay estimated tax. (*Appeal of Johnson*, 2018-OTA-119P.) Subject to certain exceptions not relevant to the issue on appeal, R&TC section 19136 incorporates IRC section 6654. 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).) There is no general reasonable cause exception to the imposition of the estimated tax penalty. (*Appeal of Johnson, supra.*) The estimated tax penalty is mandatory unless the taxpayers establish that a statutory exception applies. (*Ibid.*)


Here, appellants make no separate argument that they qualify for an exception to the estimated tax penalty, and there is no evidence in the record that an exception would apply. Instead, appellants make the same assertions outlined above regarding the alleged embezzlement and fraud committed by their tax preparer, which are reasonable cause arguments that are not available for abating this penalty. Accordingly, appellants have failed to establish a basis on which to abate the penalties for underpayment of estimated tax.

HOLDINGS

1. The late payment penalties should not be abated.
2. The underpayment of estimated tax penalties should not be abated.

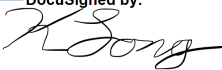
DISPOSITION

Respondent’s action is sustained.


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 Tommy Leung
 Administrative Law Judge

We concur:

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 Keith T. Long
 Administrative Law Judge

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 Josh Aldrich
 Administrative Law Judge

Date Issued: 3/14/2024