

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
G. SMITH AND) OTA Case No. 230312709
P. REYES)
_____)

OPINION

Representing the Parties:

For Appellants: G. Smith
For Respondent: Brad J. Coutinho, Attorney
For Office of Tax Appeals: Rachel Lucchini,
Graduate Student Assistant

K. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, G. Smith and P. Reyes (appellants) appeal actions by the Franchise Tax Board (respondent) denying appellants’ claims for refund of \$2,582.53 for the 2019 tax year and \$846.18 for the 2020 tax year.¹

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.) Office of Tax Appeals (OTA) Administrative Law Judge Keith T. Long held an oral hearing for this matter electronically, on December 14, 2023. At the conclusion of the hearing, the record was closed and this matter was submitted for an opinion.

¹ Appellants’ claims for refund included claims for refund of a late filing penalty and applicable interest for 2019, and a late filing penalty, an underpayment of estimated tax penalty, and applicable interest for 2020. Respondent’s denials state that it was denying the refund for the late filing penalty amounts, plus any applicable interest. Respondent’s denial states that there is no reasonable cause exception for the imposition of interest. Although respondent’s denial does not address the estimated tax penalty for 2020, there is no dispute that appellants’ claim for refund for this penalty was denied.

ISSUES

1. Whether appellants have established reasonable cause for the late filing of their 2019 and 2020 California income tax returns.
2. Whether appellants have established a basis to relieve the penalty for underpayment of estimated tax for the 2020 tax year.
3. Whether appellants have established a basis to abate interest.

FACTUAL FINDINGS

2019 Tax Year

1. Appellants did not file a timely California income tax return for the 2019 tax year.
2. Respondent issued a Payment Received – No Return on File notice dated September 1, 2021, requesting that appellants file a return or provide evidence that a return was filed.
3. On May 26, 2022, appellants filed an untimely return. After applying withholding credits of \$6,896 and estimated tax payments of \$2,419, appellants reported a tax due of \$7,713. Appellants also self-assessed penalties and interest totaling \$453. In total, appellants reported a balance due of \$8,166, which they remitted with the return.
4. Respondent issued a Notice of Tax Return Change – Revised Balance, imposing a late filing penalty of \$1,928.25. The notice also informed appellants of an interest amount due totaling \$654.28. On June 30, 2022, and on July 2, 2022, respondent credited overpayments that appellants made for the 2021 tax year to appellants' liability for 2019, satisfying the liability.

2020 Tax Year

5. Appellants filed an untimely 2020 California income tax return on June 7, 2022. After applying withholding credits of \$5,539, appellants reported a tax due of \$2,747. Appellants also self-assessed an underpayment of estimated tax penalty of \$63. Appellants remitted payment with the return.
6. Respondent imposed a late filing penalty of \$686.75 and reduced the estimated tax penalty to \$47. Respondent also charged interest of \$112.27. On July 2, 2022,

respondent credited overpayments that appellants made for the 2021 tax year to appellants' liability for 2020, satisfying the liability.

7. On September 6, 2022, appellants filed claims for refund for the 2019 and 2020 tax years, requesting abatement of the penalties based on reasonable cause. Appellants also requested interest relief.
8. Respondent denied appellants' claims for refund for the 2019 and 2020 tax years.
9. This timely appeal followed.

DISCUSSION

Issue 1: Whether appellants have established reasonable cause for the late filing of their 2019 and 2020 California income tax returns.

California imposes a penalty for failing to file a tax return on or before the due date, unless the taxpayer shows that the failure is due to reasonable cause and not willful neglect. (R&TC, § 19131.) When respondent imposes a penalty, the law presumes the penalty was imposed correctly. (*Appeal of Xie*, 2018-OTA-076P.) Taxpayers may rebut this presumption by providing credible and competent evidence establishing reasonable cause. (*Ibid.*) Unsupported assertions are not enough to satisfy the taxpayers' burden of proof. (*Appeal of Mauritzson*, 2021-OTA-198P.)

To establish reasonable cause, a taxpayer must show that the failure to timely file occurred despite the exercise of ordinary business care and prudence. (*Appeal of Jones*, 2021-OTA-144P.) In *U.S. v. Boyle* (1985) 469 U.S. 241, 252, the U.S. Supreme Court held that “[t]he failure to make a timely filing of a tax return is not excused by the taxpayer’s reliance on an agent, and such reliance is not ‘reasonable cause’ for a late filing....” The Court noted that one does not need to be a tax expert to know that tax returns have fixed filing dates and taxes must be paid when due. (*Id.* at p. 251.) OTA precedent has held that the exercise of ordinary business care and prudence requires that taxpayers do more than merely perform and/or delegate the tasks necessary to electronically file. (*Appeal of Fisher*, 2022-OTA-337P.) It also requires the taxpayer to personally verify that the tax return was successfully transmitted, and, where it has not been, to take the appropriate corrective actions. (*Ibid.*)

Here, appellants did not file timely returns for 2019 and 2020. Appellants contend that they were unaware that their tax preparer failed to file their returns until well after the due date.

However, appellants had a non-delegable duty to timely file their tax return. (*U.S. v. Boyle, supra.*) While OTA is sympathetic to appellants' situation, OTA and federal precedents control the outcome of this case. The fact that appellants relied on a tax preparer to file their return does not relieve them of the responsibility to ensure that the return was timely filed. Accordingly, appellants have not established reasonable cause for the abatement of the late filing penalty.

Issue 2: Whether appellants have established a basis to relieve the underpayment of estimated tax for the 2020 tax year.

California generally conforms to Internal Revenue Code (IRC) section 6654, which imposes an addition to tax, which is treated as a penalty, where an individual fails to timely pay estimated tax. (R&TC, § 19136(a).) The estimated tax penalty is like an interest charge in that it is calculated by applying the applicable interest rate from the due date of the estimated tax payment until the earlier of the date it is paid or the 15th day of the 4th month following the close of the taxable year. (See IRC, § 6654(a) & (b); R&TC, § 19136(b); *Appeal of Johnson*, 2018-OTA-119P.) Under R&TC section 19136, taxpayers who receive income not subject to withholding are required to make payments of the estimated amount of their tax. Generally, the required annual payment is the lesser of 90 percent of the tax shown on the current year or 100 percent of the tax shown on the prior year return. (IRC, § 6654(d)(1)(B).)

The estimated tax penalty is mandatory unless the taxpayer establishes that an exception applies. (*Appeal of Saltzman*, 2019-OTA-070P; *Appeal of Johnson, supra.*) Respondent may waive the estimated tax penalty in two instances: (1) it determines that by reason of casualty, disaster, or other unusual circumstances the imposition of the estimated tax penalty would be against equity and good conscience; or (2) it determines that the taxpayer's failure to timely pay the estimated tax was due to reasonable cause, and the taxpayer either retired after reaching age 62, or became disabled, in the taxable year for which the estimated payments were required to be made or in the previous year. (IRC, § 6654(e)(3).) The phrase "casualty, disaster, or other unusual circumstances" generally refers to unexpected events that cause hardship or loss such that it would be inequitable to impose the estimated tax penalty. (*Appeal of Johnson, supra.*)

On appeal, appellants have not asserted that either of the two exceptions to the estimated tax penalty apply. Further, OTA does not find any evidence that a casualty, disaster, or unusual circumstance contributed to appellants' underpayment or that appellants retired or became

disabled during the relevant tax year. Thus, OTA finds no basis to relieve the estimated tax penalty.

Issue 3: Whether appellants have established a basis to abate interest.

If any amount of tax imposed by the Personal Income Tax Law is not paid by the due date, interest is required to be imposed from the due date until the date the taxes are paid. (R&TC, § 19101(a).) Interest is not a penalty imposed on a taxpayer; it is compensation for the use of money after it should have been paid to the state. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.) Imposition of interest is mandatory, and may not be abated except where authorized by law. (*Appeal of Moy*, 2019-OTA-057P.) There is no reasonable cause exception to the imposition of interest. (*Ibid.*) To obtain relief from interest, taxpayers must qualify under one of the following: (1) unreasonable error or delay caused by a managerial or ministerial act by respondent under R&TC section 19104; (2) financial hardship provision under R&TC section 19112; or (3) the written advice provision under R&TC section 21012. (*Appeal of Moy*, 2019-OTA-057P.)


Here, appellants provide only reasonable cause type arguments for the abatement of interest. Appellants have not alleged facts or substantive arguments suggesting that these statutory provisions apply. Thus, OTA finds that appellants have not established any basis for abatement of interest.

HOLDINGS

1. Appellants have not established reasonable cause for the late filing of their 2019 and 2020 California income tax returns.
2. Appellants have not established a basis to relieve the penalty for underpayment of estimated tax for the 2020 tax year.
3. Appellants have not established a basis to abate interest.

DISPOSITION

Respondent's denials of appellants' claims for refund are sustained.

DocuSigned by:

DC88A60D8C3E442...

Keith T. Long
Administrative Law Judge

Date Issued: 2/21/2024