

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
S. JOO AND) OTA Case No. 22039884
Y. JOO)
_____)

OPINION

Representing the Parties:

For Appellants: Harold Jung, Attorney

For Respondent: Desiree Macedo, Attorney

S. BROWN, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, S. Joo and Y. Joo (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$24,755.09 for the 2020 tax year.

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

ISSUES

- 1. Whether appellants have established that the late-payment penalty should be abated.
- 2. Whether appellants have established that the estimated tax penalty should be abated.

FACTUAL FINDINGS

- 1. On July 10, 2020, FTB received estimated payments of \$580,000 and \$440,000 towards appellants’ tax liability for the 2020 tax year.
- 2. On June 7, 2021, appellants timely filed a joint 2020 California Resident Income Tax Return, reporting a California adjusted gross income (AGI) of over \$1 million. After applying payments and withholdings, appellants reported tax due of \$413,747. On the same date, appellants paid that tax amount in full.

3. On July 12, 2021, FTB issued to appellants a Notice of Tax Return Change – Revised Balance, indicating that FTB had imposed a late-payment penalty of \$22,756.09, an estimated tax penalty of \$1,999, and interest. On August 25, 2021, FTB issued to appellants an Income Tax Due Notice reflecting a balance due of \$25,484.86, consisting of the two penalties totaling \$24,755.09, plus interest.
4. Appellants filed a claim for refund dated July 21, 2021, and October 26, 2021, which requested abatement of the penalties.¹ FTB issued to appellants a Final Notice Before Lien and Levy dated October 15, 2021, and an Intent To Record a Notice of State Tax Lien dated December 10, 2021. Appellants made payments of \$1,571.23 and \$24,439.41 on October 27, 2021, and February 17, 2022, respectively, which fully satisfied their balance due for the 2020 tax year.
5. In a Notice of Action dated January 19, 2022, FTB denied appellants' claim for refund.
6. This timely appeal followed.

DISCUSSION

Issue 1: Whether appellants have established that the late-payment penalty should be abated.

R&TC section 19132 imposes a late-payment penalty when a taxpayer fails to pay the amount shown as due on the return by the date prescribed for the payment of the tax. 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.) Here, the late-payment penalty was properly imposed because appellants failed to pay their tax liability by the due date of May 17, 2021.² Appellants have not disputed that the full payment was late or that FTB properly calculated the late-payment penalty amount. Thus, the question is whether appellants have demonstrated reasonable cause for their failure to make a timely payment of tax.

¹ Because appellants' claim for refund was filed before the entire balance due for the 2020 tax year was paid, it was considered an informal claim for refund, which tolls the statute of limitations, but otherwise the claim is deemed filed when the amount is paid in full. (R&TC, § 19322.1.) Appellants' subsequent payment perfected the claim for refund.

² Due to COVID-19, FTB postponed the payment and filing deadlines for individuals for the 2020 tax year from April 15, 2021, 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>.)

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).) For a taxpayer to establish that a failure to act was due to reasonable cause, the taxpayer must show that the failure occurred despite the exercise of ordinary business care and prudence, or that cause existed as would prompt an ordinarily intelligent and prudent businessperson to have so acted under the circumstances. (*Appeal of Belcher*, 2021-OTA-284P.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Ibid.*) Illness or other personal difficulties may be considered reasonable cause if taxpayers present credible and competent proof that the circumstances of the illness continuously prevented the taxpayers from complying with the law. (*Appeal of Belcher, supra.*) The applicable standard of proof is by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(b).)

Appellants contend that reasonable cause exists to abate the late-payment penalty. Appellants argue that it was difficult and complicated to accurately estimate the correct amount of the capital gain resulting from the 2020 sale of a long-held real estate property in Korea; as a result, despite their best efforts, they underestimated the capital gain amount at the time of the sale, and were unable to obtain the correct information until their tax professional in Korea filed their Korean tax return on May 31, 2021. In addition, appellants state that appellant Y. Joo, who turned 74 years old in 2021, has significant, chronic health issues that worsened in spring 2021, exacerbated by an inability to access medical care during the COVID-19 pandemic; appellants assert that his health issues and resulting memory loss interfered with his ability to manage his financial affairs at that time. Appellants state that appellant S. Joo could not have handled the estimated tax payments because she was unfamiliar with the family's financial matters and does not speak English.

Further, appellants emphasize that they have a long history of tax compliance, and point out that under its first-time abatement program, the IRS waived the underpayment penalties it imposed on appellants for their federal underpayment resulting from this real property sale. However, while the Office of Tax Appeals (OTA) may consider a history of timely filing and payment compliance as supporting evidence of the credibility and intent of the taxpayer (*Appeal of Moren*, 2019-OTA-176P), R&TC section 19132.5 allows for the abatement of an individual's first-time timeliness penalties only for tax years beginning on or after January 1, 2022, and thus does not apply in the present case. (R&TC, § 19132.5(a)(1), (f).)

Appellants owed \$1,434,577 in tax on May 17, 2021, and although they had made a total of \$1,020,830 in payments and withholdings prior to that date, they did not pay the remaining \$413,747 until June 7, 2021. As support for their contentions, appellants submit a sworn declaration from appellant Y. Joo, in which he states that his family owned the real property in Korea for many years and thus computing the basis and determining the tax liability for the sale was complicated; and that the tax professional in Korea did their best at the time of the sale in 2020 to correctly estimate the amount of the capital gain, but that the estimation was difficult due in part to fluctuation between the Korean and U.S. currencies. The declaration indicates that in light of the circumstances, appellants' tax professional could not conclusively determine the capital gain until the filing of appellants' Korean tax return and was unable to complete filing of that return until the Korean tax filing deadline of May 31, 2021.

However, appellants' asserted lack of documentation or difficulty in calculating a tax liability does not, by itself, constitute reasonable cause for a late payment of tax. (*Appeal of Moren, supra.*) To establish reasonable cause, appellants must show the efforts made to acquire that information from the source that held it, and that difficulties in obtaining the necessary information led to the delay in payment. (*Ibid.*) Appellants do not identify what specific information from the Korean return was needed for their California tax computation, and have not provided evidence of what attempts, if any, they made to obtain that information before the payment deadline. Moreover, to establish reasonable cause based on substantive advice of a tax professional, a taxpayer must show that: (1) the person relied on by the taxpayer is a tax professional with competency in the subject tax law; and (2) the tax professional's advice is based on the taxpayer's full disclosure of relevant facts and documents. (*Appeal of Summit Hosting LLC, 2021-OTA-216P, citing U.S. v. Boyle (1985) 469 U.S. 241.*) Here, appellants have not provided any evidence showing what advice they received from their tax professionals, how the \$1,020,830 estimated amount was computed, or why that amount ultimately turned out to be incorrect. Absent such evidence, OTA lacks sufficient information to conclude that appellants received substantive tax advice or that such advice was based on appellants' full disclosure of the relevant facts and documents. (*Appeal of Summit Hosting LLC, supra.*)

Appellants also provided medical records showing appellant Y. Joo's medical conditions; in his declaration, Y. Joo states that as a result of his health issues, he suffered from memory loss and emotional problems that negatively impacted his ability to take care of financial affairs. The

medical documentation reflects Y. Joo's medical conditions, including treatment at emergency rooms in August 2020 and November 2020, but it is not clear how illness continuously prevented him from paying the taxes when they were due in 2021.

In light of all of the above, appellants have not established that reasonable cause for their underpayment existed.

Issue 2: Whether appellants have established that the estimated tax penalty should be abated.

Subject to certain exceptions not relevant to this appeal, R&TC section 19136 incorporates Internal Revenue Code (IRC) section 6654. IRC section 6654 imposes an addition to tax, which is treated as a penalty, where an individual fails to timely pay estimated tax. The estimated tax penalty is similar to an interest charge in that it is calculated by applying the interest rate imposed on the amount of underpaid estimated tax. (IRC, § 6654; *Appeal of Johnson*, 2018-OTA-119P.) Estimated tax payments are generally required of persons who owe more than \$500 in tax, after applying income tax withholdings and credits. (R&TC, § 19136(c)(2).) R&TC section 19136.3 provides that in the case of an individual reporting AGI in excess of \$1 million, the required annual payment is 90 percent of the tax shown on the return for the taxable year. (R&TC, § 19136.3(a); IRC, § 6654(d)(2)(B).)

There is no general reasonable cause exception to the estimated tax penalty and the imposition of the estimated tax penalty is mandatory unless the taxpayer established that a statutory exception applies. (*Appeal of Johnson, supra.*) There are two situations where the estimated tax penalty may be waived. The first situation applies only where the underpayment of estimated taxes was caused by a casualty, disaster, or other unusual circumstances, such that imposition of the penalty would be against equity and good conscience. (IRC, § 6654(e)(3)(A).) The second situation applies only to newly retired or disabled individuals: the penalty may be waived if in the year at issue or the prior year, the taxpayer either retired after reaching the age of 62 or became disabled, but only if the underpayment of estimated taxes was due to reasonable cause and not willful neglect. (IRC, § 6654(e)(3)(B).) The taxpayer bears the burden of proving that waiver of the penalty is warranted. (*Appeal of Saltzman*, 2019-OTA-070P.)

Appellants do not dispute the calculation of the estimated tax penalty, but they contend that the penalty should be abated for the same reasons provided for abatement of the late-filing penalty. However, as noted above, there is no general reasonable cause exception to the estimated tax penalty. (*Appeal of Johnson, supra.*) The burden of proof is on appellants, and

they have not offered other argument or evidence to support a statutory exception for the 2020 tax year. Consequently, appellants have not established that they are entitled to abatement of the estimated tax penalty.

HOLDINGS

1. Appellants have not established that the late-payment penalty should be abated.
2. Appellants have not established that the estimated tax penalty should be abated.

DISPOSITION

FTB’s action is sustained.

DocuSigned by:

Suzanne B. Brown

47F45ABE89E34D0

Suzanne B. Brown
Administrative Law Judge

We concur:

DocuSigned by:

Cheryl L. Akin

1A8C8E38740B4D5

Cheryl L. Akin
Administrative Law Judge

DocuSigned by:

Keith T. Long

DC88A60D8C3E442

Keith T. Long
Administrative Law Judge

Date Issued: 3/7/2024