

FACTUAL FINDINGS

1. For the 2019 tax year, FTB imposed a late payment penalty of \$2,568.41, plus \$510.57 in interest.
2. Appellants timely filed a joint 2020 California Resident Income Tax Return (return) on October 14, 2021. Appellants reported a California adjusted gross income in excess of \$1 million and a total tax of \$137,482. After applying estimated tax payments of \$80,000 and withholding credits of \$59,608, appellants reported an overpayment of \$2,126. Appellants self-assessed an estimated tax penalty of \$1,566 and requested a refund of \$560.
3. FTB accepted appellant's self-assessed estimated tax penalty. However, on November 12, 2021, FTB issued a Notice of Tax Return Change – Revised Balance, which informed appellants of adjustments to the amount of the reported estimated tax and extension payments, adjustments to the amount of reported withholding credits, the imposition of the late payment penalty, interest, and a revised balance due of \$86,834.42.
4. On December 4, 2021, appellants made three payments totaling \$87,376.80.
5. Appellants filed a claim for refund dated December 6, 2021, which requested for the penalty to be waived.
6. FTB issued a letter denying appellants' claim for refund.
7. 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 tax. Generally, the date prescribed for the payment of the tax is the due date of the return. (R&TC, § 19001.)

When FTB imposes a penalty, it is presumed that the penalty was imposed correctly. (*Appeal of Xie*, 2018-OTA-076P.) The late payment penalty may be abated if the taxpayers show 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).) To establish reasonable cause for the late payment of tax, taxpayers must show that the failure to make a timely payment of the proper amount of tax occurred despite the exercise of ordinary business care and prudence. (*Appeal of*

Moren, 2019-OTA-176P.) Taxpayers bear the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Ibid.*) Asserted lack of documentation or difficulty in calculating a tax liability does not, by itself, constitute reasonable cause for a late payment of tax. (*Ibid.*) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.)

Appellants make several claims or arguments. Appellants' core argument is that the abatement of the late payment penalty is warranted because they relied on their CPA to file an extension and to calculate the correct amount of estimated taxes. According to appellants, the estimated taxes for the tax year at issue were more complicated than usual due to the sale of real property. Also, appellants assert that they relied on their CPA who had "worked seamlessly on their [2019] taxes" which were properly prepared. Further, appellants argue that they promptly provided their CPA closing statements for the sale of real property (once in March 2020, and again in April 2020) that significantly increased their 2020 tax liability. Appellant also claim that they attempted to keep in contact with their CPA between March 2020 and April 2021, via phone since they were concerned about the COVID-19 pandemic. Appellants note that they promptly paid the balance due upon receiving notice from FTB. In sum, appellants assert that they exercised ordinary business care and prudence and acted as ordinarily intelligent and prudent businesspersons in light of the circumstances.

Here, appellants failed to timely pay the tax due by the May 17, 2021 deadline.³ Therefore, the late payment penalty was properly imposed, and the burden shifts to appellants. Although appellants claim that they hired a CPA because the taxes were more complicated, difficulty in calculating a tax liability does not, but itself, constitute reasonable cause. (*Appeal of Moren, supra.*) Further, appellants have not shown that they relied on any substantive tax advice. For 2019, appellants filed their return on time, but made no estimated tax payments and did not remit payment timely. Therefore, appellants argument that they relied on their CPA who "worked seamlessly" on their 2019 taxes is not persuasive. Further, appellants have not supported the assertions that they attempted to regularly contact their CPA between March 2020,

³ In response to COVID-19, pursuant to R&TC section 18572(b), FTB postponed to May 17, 2021, the 2020 individual tax filing and payment due dates. (See <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2021-03-state-tax-deadline-for-individuals-postponed-until-may-17-2021.html>; IRS Notice 2021-21.) FTB's postponement did not change the original due date for the 2020 returns, upon which the automatic six-month extension to file was based, and the extension expired on October 15, 2021. (*Appeal of Bannon*, 2023-OTA-096P.)

and April 2021, or when they provided their CPA with closing statements pertaining to the real property sale. In addition, appellants have not shown what, if any, efforts they undertook to compute and pay the taxes due by the deadline. As such, appellants have not provided credible and competent evidence to meet their burden of proof. According, OTA finds that appellants have not established that the late payment penalty should be abated.

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

Except as otherwise provided, California conforms to Internal Revenue Code (IRC) section 6654 and imposes an estimated tax penalty for the failure to timely make estimated income tax payments. (R&TC, § 19136(a); IRC, § 6654.)

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 establishes that a statutory exception applies. (*Appeal of Johnson*, 2018-OTA-119P.) The estimated tax penalty may be waived under two limited exceptions: (1) where the underpayment of tax was due to casualty, disaster, or other unusual circumstances such that imposition of the penalty would be against equity and good conscience; or (2) where the underpayment is due to reasonable cause and not willful neglect, if the taxpayer either retired after having attained age 62 or became disabled in the taxable year for which the estimated tax payments were required to be made or in the previous taxable year. (IRC, § 6654(e)(3).)

Appellants argue that COVID-19 together with the sale of real property was an “unusual circumstance” which would make the imposition of the penalty against good equity and conscience. In addition, appellants argue that they are entitled to waiver under the second exception because the underpayment was due to reasonable cause and appellants argue that appellant-wife retired after the age of 62 and began collecting social security during 2020.

Here, appellants self-assessed and reported an underpayment of estimated tax penalty of \$1,566. FTB accepted the amount as correct because appellants did not have sufficient, or any, estimated tax payments for the 2020 year. Regarding the first exception, appellants have not shown how appellants were impacted by COVID-19, nor have appellants provided any support for that position. Further, appellants completed a profitable real property sale, which was not an unexpected event that caused a loss or hardship. (*Appeal of Johnson, supra.*) In other words, “it does not offend equity or good conscience to impose an addition to tax on appellants’ failure to pay estimated tax when they recognized a large amount of gain on the sale of real property but


failed to make estimated tax payments.” (*Ibid.*) Regarding the second exception, OTA examined reasonable cause relating to the late payment penalty, and for the same reasons as set forth in Issue 1, OTA finds that appellants have not established reasonable cause for purposes of the estimated tax penalty. In sum, appellants have not established entitlement to either exception under IRC section 6543(e)(3).

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 waived.


DISPOSITION

FTB’s action denying appellants’ claim for refund is sustained.

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 Josh Aldrich
 Administrative Law Judge

We concur:

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 Kenneth Gast
 Administrative Law Judge

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 Ovsep Akopchikyan
 Administrative Law Judge

Date Issued: 3/18/2024