

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 221212096
W. HALEY AND)
J. HALEY)
_____)

OPINION

Representing the Parties:

For Appellants: W. Haley
J. Haley

For Respondent: AnaMarija Antic-Jezildzic, Program
Specialist

For Office of Tax Appeals: Andrew Jacobson, Attorney

E. LAM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, W. Haley and J. Haley (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$1,765.34 for the 2021 tax year.¹

Appellants waived the right to an oral hearing; therefore, the Office of Tax Appeals (OTA) decides the matter based on the written record.

ISSUES

1. Whether appellants have established reasonable cause to abate the late payment penalty.
2. Whether appellants have established a basis to abate the underpayment of estimated tax penalty (estimated tax penalty).

FACTUAL FINDINGS

1. On April 15, 2022, appellants timely filed a 2021 California Resident Income Tax Return, on which they reported total tax of \$33,665. Appellants claimed California

¹ Appellant’s request for refund consists of a late payment penalty of \$1,325.34 and an estimated tax penalty of \$440.

income tax withholding of \$9,568, reported tax due of \$24,097 and self-assessed an estimated tax penalty of \$440, resulting in an amount due of \$24,537. FTB processed the return.

2. On April 24, 2022, appellants sent FTB an electronic payment of \$24,537.
3. On June 27, 2022, FTB issued appellants a State Income Tax Balance Due Notice which informed appellants that FTB had imposed total penalties of \$1,765.34, consisting of a late payment penalty of \$1,325.34, an estimated tax penalty of \$440, and interest of \$24.85. FTB applied payments of \$34,105, consisting of \$9,568 of withholdings and appellant's April 24, 2022 payment of \$24,537. Therefore, the remaining balance was \$1,350.19.
4. On July 12, 2022, appellants remitted a payment of \$1,350.19 to FTB which satisfied the remaining balance.
5. On September 15, 2022, appellants filed a claim for refund in the amount of \$1,765.34, which consisted of the late payment penalty of \$1,325.34 and estimated tax penalty of \$440.
6. In a letter dated November 28, 2022, FTB denied appellants' claim for refund for \$1,325.34. In another letter, FTB also denied appellants' claim for refund for \$440.
7. Appellants then filed this timely appeal.

DISCUSSION

Issue 1: Whether appellants have established reasonable cause to abate the late payment penalty.

R&TC section 19132 imposes a late payment penalty when a taxpayer fails to pay the amount of tax shown as due on the return by the date prescribed for the payment of the tax. Tax is due on the original due date of the return without regard to the extension to file. (R&TC, §§ 19001; § 18567(b).) Returns for individuals who file on a calendar-year basis must be filed on or before April 15th following the close of the calendar year. (R&TC, § 18566.) When FTB imposes a penalty, the law presumes that the penalty was imposed correctly. (*Appeal of Xie*, 2018-OTA-076P.) Here, appellants do not dispute that FTB properly imposed or computed the late payment penalty.

The late payment penalty may be abated if the taxpayers show that the failure to make timely payments of tax was due to reasonable cause and was not due to willful neglect. (R&TC,

§ 19132(a)(1).) Here, FTB does not assert willful neglect. Therefore, the remaining issue regarding the late payment penalty is whether appellants have demonstrated reasonable cause for their failure to timely pay their required taxes in full. To establish reasonable cause for the late payment of tax, taxpayers must show that the failure to make timely payments of the proper amount of tax occurred despite the exercise of ordinary business care and prudence. (*Appeal of Friedman*, 2018-OTA-077P.) The taxpayers bear the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Ibid.*) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Scanlon*, 2018-OTA-075P.)

Illness or other personal difficulties may be considered reasonable cause if taxpayers present credible and competent proof that they were continuously prevented from filing a tax return. (*Appeal of Head and Feliciano*, 2020-OTA-127P)² When taxpayers allege reasonable cause based on an incapacity due to illness, the duration of the incapacity must approximate that of the tax obligation deadline. (*Ibid.*) However, if the difficulties simply caused the taxpayers to sacrifice the timeliness of one aspect of their affairs to pursue other aspects, the taxpayers must bear the consequences of that choice. (*Ibid.*)

Appellants contend that they paid their tax late because they attended their daughter's wedding in North Carolina from April 14 to April 18, 2022. Appellants assert that they completed their tax return on TurboTax using a work computer and intended to send in the tax payment on the due date of April 18, 2022. Appellants also assert that they chose not to bring the work computer to the wedding to concentrate on the event and not work. However, appellants assert that their departure from North Carolina was delayed due to a COVID-19 diagnosis, and only once they returned to California on April 20, 2022, were appellants able to remit their tax payment, which FTB received on April 24, 2022.³

² Since the issue of whether a taxpayer has demonstrated reasonable cause for failure to pay tax asks the same questions and weighs the same evidence as the inquiry of whether reasonable cause exists for failure to file a tax return, decisions analyzing whether reasonable cause existed for failure to timely file a tax return are persuasive authority for determining whether reasonable cause existed for the failure to timely pay the tax. (*Appeal of Triple Crown Baseball LLC*, 2019-OTA-025P, fn. 8.)

³ Appellants asserted that they remitted payment two days late. However, according to evidence in the record, FTB received the payment on April 24, 2022, which is more than two days late from the due date of April 18, 2022.

However, appellants have not explained who was diagnosed with COVID-19 nor have they provided any evidence to support such a diagnosis to satisfy their burden of proof. Furthermore, appellants have not demonstrated that they were both incapacitated and unable to make a timely tax payment. Here, unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Scanlon, supra.*) Additionally, appellants have not established that they took any steps or made any efforts to ensure compliance with their duty to timely pay their taxes. Therefore, appellants have not shown that the failure to make timely payments of the proper amount of tax occurred despite the exercise of ordinary business care and prudence. Therefore, appellants have failed to show reasonable cause for the late payment of their 2021 taxes.

Issue 2: Whether appellants have established a basis to abate the estimated tax penalty.

Except as otherwise provided, R&TC section 19136 conforms to Internal Revenue Code (IRC) section 6654 and imposes an addition to tax, which is treated as and often referred to as a penalty, when taxpayers fail to timely pay estimated tax.⁴ The addition to tax is similar to an interest charge in that it is calculated applying the interest rate imposed on underpayments on the amount of the underpayment of estimated tax. (See IRC, § 6654(a); R&TC, § 19136(b); *Appeal of Saltzman, 2019-OTA-070P.*) There is no general reasonable cause exception to the imposition of the estimated tax penalty. (*Appeal of Saltzman, supra.*) The estimated tax penalty is mandatory unless the taxpayers establish that a statutory exception applies.⁵ (*Ibid.*)

Appellants self-assessed the estimated tax penalty of \$440 on their return, and FTB agreed to the computation. Appellants, therefore, do not contest the imposition or computation of the estimated tax penalty. Instead, appellants present the same reasonable cause arguments that they raise with respect to the late payment penalty in their request for the abatement of the

⁴ When estimated tax payments are due, R&TC section 19136.1(a)(2) generally requires, for California income tax purposes, that the payments be made in installments on or prior to April 15 and June 15 of the applicable tax year, and January 15 of the subsequent tax year. For federal income tax purposes, an additional installment is also due by September 15 of the applicable tax year. (IRC, § 6654; see *Appeal of Johnson, 2018-OTA-119P, fn. 3.*)

⁵ Under IRC section 6654(e)(3)(A), the IRS (or here, FTB) may waive the addition to tax, i.e., estimated tax penalty, if it determines that, "by reason of casualty, disaster, or other unusual circumstances the imposition of such addition to tax would be against equity and good conscience." Second, under IRC section 6654(e)(3)(B), the addition to tax may be waived if the IRS (or here, FTB) determines that (i) during the applicable tax year or the preceding tax year, the taxpayer either retired after having attained age 62, or became disabled, and (ii) the underpayment was due to reasonable cause and not due to willful neglect. However, appellants do not argue or provide evidence that either of these provisions is applicable. Therefore, OTA does not address them further.

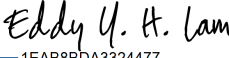
estimated tax penalty. However, unlike the late payment penalty, there is no authority to abate the estimated tax penalty based solely on reasonable cause. (*Appeal of Salzman, supra.*) Therefore, OTA need not reexamine appellants’ reasonable cause arguments, and the estimated tax penalty cannot be abated.

HOLDINGS

1. Appellants have not established reasonable cause to abate the late payment penalty.
2. Appellants have not established a basis to abate the estimated tax penalty.

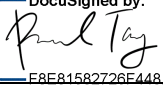
DISPOSITION

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

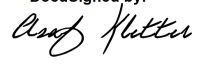
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 Eddy Y.H. Lam
 Administrative Law Judge

We concur:

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 Richard Tay
 Administrative Law Judge

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 Asaf Kletter
 Administrative Law Judge

Date Issued: 6/18/2024