

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 230914317
T. REEN AND)
P. NANDA-REEN)
_____)

OPINION

Representing the Parties:

For Appellants: Keith Stoller, EA

For Respondent: Paige Chang, Attorney

For Office of Tax Appeals: Nguyen Dang, Attorney

K. GAST, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, T. Reen and P. Nanda-Reen (appellants) appeal an action by the Franchise Tax Board (respondent) denying appellants’ claim for refund of \$7,001.52 for the 2021 tax year.¹

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

ISSUE

Whether appellants have established a basis for abating the late-filing penalty, underpayment of estimated tax penalty (estimated tax penalty), and interest.

FACTUAL FINDINGS

1. Appellants failed to make sufficient estimated tax payments for the 2021 tax year.
2. Appellants did not timely file their joint 2021 California income tax return (Return).
3. Respondent imposed a late-filing penalty, estimated tax penalty, and interest.
4. Appellants paid the balance due and filed a refund claim.
5. Respondent denied the claim and this timely appeal followed.

¹ This amount consists of a late-filing penalty of \$6,303, an underpayment of estimated tax penalty of \$140, and interest of \$558.52.

DISCUSSION

On appeal, appellants do not dispute that the Return was untimely, that they failed to make sufficient estimated tax payments, or respondent's calculation of the penalty amounts. Instead, appellants argue that the penalties and interest should be abated because they reasonably relied upon their tax return preparer to timely file the Return and that this individual was unable to perform this obligation due to severe illness. Appellants further contend that public policy and common sense supports granting them one-time abatement of the late-filing penalty under these circumstances, despite the fact that R&TC section 19132.5 authorizes such relief only for tax years beginning on or after January 1, 2022.

Late-Filing Penalty

The late-filing penalty shall not apply if the late filing was due to "reasonable cause" and not willful neglect. (R&TC, § 19131(a).) To establish reasonable cause, taxpayers must show that the failure to timely file a return occurred despite the exercise of ordinary business care and prudence; that is, the taxpayer must show that they acted as an ordinarily prudent businessperson would have given the circumstances. (*Appeal of Quality Tax & Financial Services, Inc.*, 2018-OTA-130P.) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof. (*Appeal of Bannon*, 2023-OTA-096P.)

The Office of Tax Appeals (OTA) has consistently held that a taxpayer's reliance upon an agent to file a return by the due date does not constitute reasonable cause because taxpayers have a non-delegable obligation to ensure that a return is filed on time. (*Appeal of Fisher*, 2022-OTA-337P.) In other words, merely delegating the task of filing a return is insufficient to establish that penalty abatement is warranted. (*Ibid.*) Instead, the exercise of ordinary business care and prudence required appellants, prior to the filing deadline, to personally verify that the Return had been filed, and when it has not been, to take the necessary corrective actions to ensure that the Return would be timely filed. (*Ibid.*) The record does not show that appellants took any such actions. Instead, appellants chose to rely solely upon their tax return preparer. Appellants must therefore bear the consequences of that decision.

Accordingly, appellants have not demonstrated reasonable cause for abating the late-filing penalty.

Estimated Tax Penalty

The estimated tax penalty may also be waived upon a showing of reasonable cause, but only for those taxpayers who have 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. (R&TC, § 19136 [incorporating with some modifications Internal Revenue Code, § 6654].)

Appellants have not shown that they meet the above conditions for waiver of the penalty based on reasonable cause. Also, appellants' argument concerning their late filing does not address their failure to make sufficient quarterly estimated tax payments.

Therefore, appellants have not shown that the estimated tax penalty should be waived.

Interest

The imposition of interest is mandatory and accrues on a tax deficiency regardless of the reason for the underpayment. (R&TC, § 19101(a); *Appeal of Balch*, 2018-OTA-159P.) There is no reasonable cause exception to the imposition of interest. (*Appeal of Moy*, 2019-OTA-057P.) To obtain interest relief, appellants must qualify under one of the waiver provisions of R&TC sections 19104 (pertaining to unreasonable error or delay by respondent in the performance of a ministerial or managerial act), 19112 (pertaining to extreme financial hardship caused by significant disability or other catastrophic circumstance),² or 21012 (pertaining to reasonable reliance on the written advice of respondent). (*Ibid.*) Appellants do not allege, and the record does not reflect, that any of these waiver provisions are applicable here.

One-Time Penalty Abatement

As noted by appellants, R&TC section 19132.5 provides for a one-time abatement of the late-filing penalty for individual taxpayers with good tax compliance history. Appellants' position appears to be that OTA has the authority to extend the application of the statute to the 2021 tax year based on the situation described by appellants. OTA disagrees.

² Only respondent has the authority to waive interest under R&TC section 19112. (See *Appeal of Moy*, *supra*.)

Regardless of the cause of appellants' late filing, OTA is bound to follow the law. In determining how the law should be applied, public policy and commonsense considerations are generally relevant only to the extent there is ambiguity in the statute—that is, where OTA is asked to decide between several reasonable interpretations of a statute. (See *Hoechst Celanese Corp. v. Franchise Tax Bd.* (2001) 25 Cal.4th 508, 519.) However, where no ambiguity exists and the text of the statute provides a clear answer, it is presumed that the Legislature meant what it said and the plain language of the statute governs. (See *ibid.*)

Here, the statute unequivocally states that “[t]his section shall apply to requests for abatement made for taxable years beginning on or after January 1, 2022.” (R&TC, §19132.5(f).) There are no exceptions to this provision. Therefore, because the statute is clear that such relief is available only for tax years beginning on or after January 1, 2022, OTA need not resort to any public policy or other extrinsic considerations in determining how the statute should be applied, and OTA applies the statute as it is plainly written.

Accordingly, appellants are not entitled to one-time penalty abatement for the 2021 tax year.

HOLDING

Appellants have not established a basis for abating the late-filing penalty, estimated tax penalty, or interest.

DISPOSITION

Respondent’s action is sustained.

DocuSigned by:
Kenneth Gast
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Kenneth Gast
Administrative Law Judge

We concur:

DocuSigned by:
Sara A. Hosey
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Sara A. Hosey
Administrative Law Judge

DocuSigned by:
Josh Lambert
CB1E7DA37834416...
Josh Lambert
Administrative Law Judge

Date Issued: 7/17/2024