

OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:)	OTA Case No. 230513342
F. YOUSEFIAN)	
)	
)	
)	

OPINION

Representing the Parties:

For Appellant:	F. Yoosefian
For Respondent:	Ariana Macedo, Graduate Legal Assistant Cynthia Kent, Attorney Supervisor

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, F. Yoosefian (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$599.78 in late payment and \$153 in estimated tax penalties for the 2021 taxable year.

Appellant elected to have this appeal determined pursuant to the procedures of the Small Case Program. Those procedures require the assignment of a single panel member. (Cal. Code Regs., tit. 18, § 30209.05.) Office of Tax Appeals Administrative Law Judge Tommy Leung held an oral hearing for this matter electronically on May 22, 2024. At the conclusion of the hearing, the record was closed, and this matter was submitted for an opinion.

ISSUES

1. Should the late payment penalty be abated?
2. Should the estimated tax penalty be abated?
3. Should interest be abated?

FACTUAL FINDINGS

1. Appellant filed her 2021 California personal income tax return (Form 540) and paid the tax due thereon on September 15, 2022. Consequently, respondent imposed late payment and estimated tax penalties, plus interest, which appellant paid.
2. Appellant left Texas in 2013, when she was a military reservist who also held a civilian job. Appellant commenced filing California tax returns beginning with the 2014 taxable year. However, appellant's command did not change her residency status to California for state tax purposes. During 2021, appellant went from reserve status to active-duty status because of COVID-19. Appellant found out that her command did not change her residency status until after she had contacted them following receipt of respondent's notice imposing the penalties.
3. After appellant paid the penalties and interest, she requested a refund therefor, which respondent denied.

DISCUSSION

Issue 1: Should the late payment penalty be abated?

The late payment penalty may be abated where the failure to make a timely payment was due to reasonable cause and not willful neglect. (R&TC, § 19132(a)(1).) To establish reasonable cause, the taxpayer must show that the failure to timely pay occurred despite the exercise of ordinary business care and prudence. (*Appeal of Scanlon*, 2018-OTA-075P.) Respondent's determination is presumed to be correct, and the taxpayer has the burden of proving otherwise. (*Appeal of Davis and Hunter-Davis*, 2020-OTA-182P.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Ibid.*) In the absence of credible, competent, and relevant evidence showing error, respondent's determinations must be upheld. (*Ibid.*) The burden of proof requires proof by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(b).) The law provides that taxpayers have a non-delegable obligation to pay their taxes by the due date; thus, a taxpayer's reliance on an agent, such as an accountant, to pay by the due date is not reasonable cause. (See *U.S. v. Boyle* (1985) 469 U.S. 241, 252; *Appeal of Rougeau*, 2021-OTA-335P.)

Here, appellant asserts when she was on reserve duty status, her command had her listed as a Texas resident. However, when she was activated, she was a California resident, and the

military did not change her residency for state tax purposes to California. When appellant was notified that she had paid her California taxes late, she notified her command to make the change. If the change to her residency and return to active duty happened in the same year, a finding of reasonable cause might be justified. However, because appellant's move to California occurred at least six years earlier, a finding of reasonable cause is not warranted. Appellant had been filing California returns since the 2014 taxable year, so she was cognizant of her filing requirements for this State and could have avoided the late payment penalty by paying her taxes directly on time instead of relying on her command to withhold California taxes from her military pay.

Issue 2: Should the estimated tax penalty be abated?

Internal Revenue Code (IRC) section 6654 imposes an addition to tax, which is treated and often referred to as a penalty, when an individual fails to timely pay estimated tax. (*Appeal of Johnson*, 2018-OTA-119P.) Subject to certain exceptions not relevant to the issue on appeal, R&TC section 19136 incorporates IRC section 6654. The estimated tax penalty is similar to an interest charge in that it is calculated by applying the applicable interest rate to the underpayment of estimated tax. (See IRC, § 6654(a).) There is no general reasonable cause exception to the imposition of the estimated tax penalty. (*Appeal of Johnson, supra.*) The estimated tax penalty is mandatory unless the taxpayer establishes that a statutory exception applies. (*Ibid.*)

Here, appellant makes no separate argument that she qualifies for an exception to the estimated tax penalty, and there is no evidence in the record that an exception would apply. Instead, appellant makes the same assertions outlined above regarding the late payment penalty. Without more, the estimated tax penalty cannot be abated.

Issue 3: Should interest be abated?

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.) Therefore, to obtain interest relief appellant must qualify under R&TC section 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), or 21012 (pertaining to reasonable reliance on the written advice of

respondent). (*Ibid.*) Appellant did not allege, and the record does not reflect, that any of these waiver provisions are applicable here. Therefore, there is no basis for abating interest.

HOLDINGS

1. The late payment penalty cannot be abated.
2. The estimated tax penalty cannot be abated.
3. Interest cannot be abated.

DISPOSITION

Respondent's action is sustained.

DocuSigned by:

0C90542BE88D4E7...

Tommy Leung
Administrative Law Judge

Date Issued: 8/19/2024