

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 230513438
J. BUTLER AND)
V. BUTLER)
_____)

OPINION

Representing the Parties:

For Appellants: Ken Rosol

For Respondent: Camille Dixon, Attorney

For Office of Tax Appeals: Oliver Pfof, Attorney

V. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. Butler and V. Butler (appellants) appeal an action by the Franchise Tax Board (respondent) denying appellants’ claim for refund of \$26,926.28 for the 2021 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 reasonable cause to abate the late-payment penalty.
2. Whether appellants have established a basis to abate the estimated tax penalty.

FACTUAL FINDINGS

1. Appellants filed a joint 2021 California Resident Income Tax Return (return).
2. Respondent processed the return and issued a Notice of Tax Return Change – Revised Balance to appellants informing them that respondent had revised appellants’ reported estimated tax payments from \$270,000 to \$1,230, that consequently, appellants’ tax liability had not been fully paid, and that penalties for late payment and underpayment of estimated tax would be imposed.

3. In October 2022, appellants paid the balance due for the 2021 tax year in full and filed a timely claim for refund seeking abatement of the late-payment penalty and the estimated tax penalty, which totaled \$26,926.28.
4. Respondent denied appellants' claim for refund, stating appellants had not shown a basis to abate the late-payment and estimated tax penalties. Appellants timely appealed the denial of their refund claim to the Office of Tax Appeals (OTA).
5. On appeal, appellants provide a photocopy of a personal check, dated January 6, 2022, which they mailed to respondent as their fourth quarter estimated tax payment for the 2021 tax year. In the box portion of the check, appellant J. Butler wrote "270,000" but in the amount line wrote "two hundred and seventy 00/100." On January 11, 2022, respondent cashed the check in the amount of \$270.00.

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 required to be shown as due on the return by the date prescribed for the payment of tax, unless it is shown that the failure is due to reasonable cause and not due to willful neglect. Generally, the date prescribed for the payment of the tax is the due date of the return, determined without regard to any extension of time for filing the return. (R&TC, § 19001.) Appellants agree they failed to pay the amount of tax required to be shown as due on their return, and appellants do not dispute respondent's calculation of the penalty. Rather, appellants contend there was reasonable cause for the late payment.

To establish reasonable cause for the late payment of tax, the taxpayer 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 Triple Crown Baseball LLC*, 2019-OTA-025P.) Mental illness or incapacity may establish reasonable cause where a taxpayer presents credible and competent proof that the circumstances of the illness or incapacity continuously prevented the taxpayer from complying with the law. (*Appeal of Belcher*, 2021-OTA-284P.) The taxpayer asserting mental illness or incapacity bears the burden of showing that the mental illness or incapacity rendered the taxpayer incapable of exercising ordinary business care and prudence during the relevant time period. (*Ibid.*) Conversely, if the taxpayer can exercise ordinary

business care and prudence with respect to nontax matters, the claimed mental illness or incapacity does not constitute reasonable cause. (*Ibid.*) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Mauritzson*, 2021-OTA-198P.) Absent a showing of extenuating circumstances such as mental illness or incapacity, a mistake or oversight by a taxpayer does not, by itself, constitute reasonable cause. (See *Appeal of Friedman*, 2018-OTA-077P.)

Appellants contend appellant J. Butler's mental health has been slowly deteriorating over the past couple of years. He was advised by a tax professional to make a fourth quarter estimated tax payment of \$270,000 for the 2021 tax year. Appellants tendered a personal check to respondent on or around January 6, 2022. Although appellant J. Butler wrote "270,000" in the box portion of the check, he wrote "two hundred and seventy 00/100" on the amount line, and respondent cashed the check in the amount of \$270.00. Appellants contend that they believed they had made a payment of \$270,000, ultimately causing appellants to fail to timely pay their 2021 tax liability. Appellants further contend they believe the late-payment penalty is excessive and should be waived based on appellant J. Butler's innocent error.

Appellants have the burden of showing appellant J. Butler possessed a mental illness or incapacity that rendered him incapable of exercising ordinary business care and prudence. (*Appeal of Belcher, supra.*) Appellants have not provided any evidence showing appellant J. Butler had a pertinent mental health impairment rendering him incapable of exercising ordinary business care and prudence when completing the fourth quarter estimated tax payment, and unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Mauritzson, supra.*) Moreover, absent a showing of extenuating circumstances such as a pertinent mental health impairment, appellant J. Butler's mistake does not constitute reasonable cause to abate the late-payment penalty. (See *Appeal of Friedman, supra.*) Thus, appellants have not established reasonable cause to abate the late-payment penalty.¹

¹ Appellants' argument that the amount of the penalty is excessive is not a basis to abate the late-payment penalty. OTA is not a court but an administrative agency charged with determining the correct amount of tax. (*Appeals of Dauberger, et al.* (82-SBE-082) 1982 WL 11759.) California law prescribes the amount of the penalty and OTA does not have authority to make discretionary adjustments to the amount. (*Appeal of Porreca*, 2018-OTA-095P.)

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

Internal Revenue Code (IRC) section 6654 imposes an addition to tax, which is treated and often referred to as a penalty, where an individual fails to timely pay estimated tax. Subject to certain exceptions not relevant to the issues on appeal, R&TC section 19136 incorporates IRC section 6654. IRC section 6654(e)(3)(B) provides that respondent may waive the estimated tax penalty if it determines the taxpayer retired after having attained the age of 62 in the tax year for which estimated tax payments were required to be made, or in the tax year preceding such tax year, and the underpayment was due to reasonable cause and not willful neglect.

Here, there is no evidence appellants retired in the 2021 tax year or the prior year, as required by IRC section 6654(e)(3)(B). Even if appellants met the retirement requirement, they provide the same reasonable cause arguments for abatement of the estimated tax penalty as they provided for abatement of the late-payment penalty. OTA considered appellants' reasonable cause arguments above and determined they were not supported by the evidence. Thus, appellants have not established a basis to abate the estimated tax penalty.

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

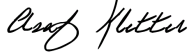
OTA sustains respondent’s action denying appellants’ claim for refund.

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 Veronica I. Long
 Administrative Law Judge

We concur:

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 Administrative Law Judge

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 Administrative Law Judge

Date Issued: 6/13/2024