

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 230513254
R. CLAPP AND)
M. CLAPP)
_____)

OPINION

Representing the Parties:

For Appellants: R. Clapp
M. Clapp

For Respondent: Noel Garcia-Rosenblum, Attorney

For Office of Tax Appeals: Louis Ambrose, Attorney

A. KLETTER, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, R. Clapp and M. Clapp (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$8,424.85 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 for the late payment of tax.
2. Whether appellants have established a legal basis for abatement of interest.

FACTUAL FINDINGS

1. FTB received appellants’ joint 2021 California Resident Income Tax Return (Form 540) on August 7, 2022, reporting tax due of \$120,355. On the same day, FTB received an electronic payment of \$120,355.
2. FTB processed the Form 540 and imposed a late payment penalty of \$8,424.85 because the payment was received after the payment due date. FTB issued a Notice of Tax

Return Change – Revised Balance dated August 29, 2022, reflecting the imposition of the late payment penalty and interest for the 2021 tax year.

3. Appellants paid the balance due and filed a claim for refund. FTB denied the claim for refund and appellants filed this timely appeal.

DISCUSSION

Issue 1: Whether appellants have established reasonable cause for the late payment of tax.

Here, it is undisputed that appellants failed to make timely payment of the tax and appellants do not dispute that the penalty was correctly calculated in accordance with the applicable statute. The late payment penalty may be abated if the taxpayer shows that the failure to make timely payment was due to reasonable cause and not willful neglect. (R&TC, § 19132(a)(1).) The taxpayer has the burden of proof to show that reasonable cause exists to support abatement of the late payment penalty. (*Appeal of Triple Crown Baseball LLC*, 2019-OTA-25P.) To establish reasonable cause for a late payment of tax, a taxpayer must show that the failure to make a timely payment occurred despite the exercise of ordinary business care and prudence. (*Ibid.*) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Bindley*, 2019-OTA-179P.)

Appellants assert that the late payment of tax was the result of their difficulty obtaining from their CPA a Schedule K-1 for a new family limited partnership (FLP) formed in October of 2021. By letter dated September 12, 2023, FTB requested documentation from appellants to substantiate their efforts to obtain the necessary information and to pay the tax timely. In response, appellants stated that their tax representative cancelled numerous appointments with them between March and July of 2022 but that the only record of those cancellations were text messages which had been deleted. Appellants also asserted that their CPA instructed them to make an estimated tax payment of \$100,000 via their FLP account. Appellants submitted a cashier's check for that amount to FTB on December 16, 2021 to the FLP tax account, but subsequently learned that the payment should have been designated for their individual tax account. When appellants realized the mistake, they voided the check on March 16, 2022. Appellants stated that they were advised by their CPA, their attorney, and the bank not to send

another cashier's check to FTB. Appellants assert the same or similar arguments in their appeal letter.

The assertion that a taxpayer lacked necessary information to make a reasonably accurate estimate of tax liability or difficulty in calculating a tax liability with available documentation does not, by itself, constitute reasonable cause for a late payment of tax. (*Appeal of Moren*, 2019-OTA-176P.) A taxpayer must show what efforts he or she made to acquire the information and that difficulties in obtaining the necessary information led to the delay in payment. (*Ibid.*) An assertion that records were difficult to obtain without any substantiation of efforts made to retrieve those records or otherwise showing that they were unobtainable is not sufficient to show reasonable cause. (*Ibid.*) Here, appellants have not provided any evidence of their efforts and how the difficulties led to the delay.

A taxpayer's difficulty in determining income with exactitude does not negate the requirement that taxpayers make payments of tax based upon a reasonably accurate estimate of their tax liability. (*Appeal of Rougeau*, 2021-OTA-335P.) Here, appellants' attempted tax payment of \$100,000 dated December 16, 2021, demonstrates they were able to reasonably estimate their tax liability prior to the payment deadline. Thus, this fact undercuts appellants' argument that late payment was caused by the delay in receiving the Schedule K-1.

Though the attempted payment was voided a month prior to the payment deadline, appellants assert that they were advised by their CPA not to submit a timely payment to the correct tax account. However, a taxpayer has a personal, non-delegable obligation to meet statutory deadlines and "[i]t requires no special training or effort to ascertain a deadline and make sure it is met." (*Appeal of Rougeau, supra*. [citing *U.S. v. Boyle* (1985) 469 U.S. 241, 251-252.]) Moreover, while reliance on a CPA's advice under certain circumstances may constitute reasonable cause for late payment, such reliance "cannot function as a substitute for compliance with an unambiguous statute." (*Appeal of Summit Hosting LLC*, 2021-OTA-216P.) Thus, appellants have failed to establish that they failed to make a timely payment of tax despite the exercise of ordinary business care and prudence.

Appellants also state that their federal failure to pay penalty was abated by the IRS and, therefore, they assumed FTB would also abate the late payment penalty. It appears that the IRS granted relief as a first-time abatement and the Office of Tax Appeals notes that for the taxable year at issue, California did not have a first-time abatement program similar to the program

administered by the IRS. Effective beginning with the 2022 tax year, California adopted a first-time abatement program, by statute. (R&TC, § 19132.5.) However, the statute does not apply retroactively such that appellants' late payment penalty may be abated. (R&TC, § 19132.5(f).) Based on the foregoing, appellants have not established reasonable cause or any other basis to abate the late payment penalty.

Issue 2: Whether appellants have established a legal basis for abatement of interest.

Interest must be assessed from the date a tax payment is due through the date that it is paid. (R&TC, § 19101(a).) Imposing interest is mandatory; it is not a penalty, but it is compensation for appellants' use of money after it should have been paid to the state. (*Appeal of Moy*, 2019-OTA-057P.) There is no reasonable cause exception to the imposition of interest. (*Ibid.*) To obtain relief from interest, appellants must qualify under the waiver provisions of R&TC sections 19104, 19112, or 21012. (*Appeal of Balch*, 2018-OTA-159P.)

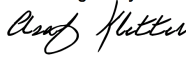
R&TC section 19104 provides for abatement when the interest is attributable to any unreasonable error or delay by an officer or employee of FTB when performing a ministerial or managerial act. These circumstances are neither alleged nor shown to be present here. The relief of interest under R&TC section 21012 is not relevant here, as FTB did not provide appellants with any written advice. R&TC section 19112 requires a taxpayer to make a showing of extreme financial hardship caused by a significant disability or other catastrophic circumstance. However, OTA has no jurisdiction to determine whether appellants are entitled to the abatement of interest under R&TC section 19112. (*Appeal of Moy, supra.*) Therefore, appellants have not demonstrated any grounds for the abatement of interest.

HOLDINGS

1. Appellants have not established reasonable cause for the late payment of tax.
2. Appellants have not established a legal basis for abatement of interest.


DISPOSITION

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


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 Asaf Kletter
 Administrative Law Judge

We concur:

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 Veronica I. Long
 Administrative Law Judge

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 Huy “Mike” Le
 Administrative Law Judge

Date Issued: 8/15/2024