

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
D. ANGLEMYER) OTA Case No. 230814113
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OPINION

Representing the Parties:

For Appellant: Rebecca Montes, Representative

For Respondent: David Muradyan, Attorney

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, D. Anglemyer (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$3,355.19 for the 2020 taxable year.

Appellant waived the right to an oral hearing; therefore, the matter was submitted to the Office of Tax Appeals (OTA) on the written record pursuant to California Code of Regulations, title 18, section 30209(a).

ISSUES

1. Has appellant established reasonable cause to abate the late-payment penalty?
2. Has appellant established a basis to abate the penalty for underpayment of estimated tax (estimated tax penalty)?

FACTUAL FINDINGS

1. Appellant filed a timely 2020 California Resident Income Tax return reporting total tax of \$19,349, taxes withheld of \$122, and estimated tax paid of \$20,000. Attached to the tax return was Form 5805, Underpayment of Estimated Tax by Individuals and Fiduciaries, which reported that no estimated tax payments were made and calculated an estimated tax penalty of \$375.
2. FTB’s records did not reflect receipt of the \$20,000 estimated tax reported on appellant’s tax return. On November 22, 2021, FTB issued to appellant a Notice of Tax Return Change – Revised Balance (Notice) which revised appellant’s tax due to \$19,227,

- imposed a late-payment penalty of \$1,634.30,¹ and included the self-assessed estimated tax penalty of \$375, plus interest.
3. Appellant paid the tax due on January 20, 2023, which was 21 months late.
 4. FTB increased the late-payment penalty to \$2,980.19.²
 5. Appellant paid the balance and requested a refund of \$3,355.19, which included the \$2,980.19 late-payment penalty and the estimated tax penalty of \$375, based on reasonable cause. FTB requested documentation supporting appellant's claim.
 6. When appellant did not provide additional documentation, FTB denied appellant's claim for refund, and appellant filed this timely appeal.

DISCUSSION

Issue 1: Has appellant 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 shown as due on the return by the date prescribed for the payment of the tax. Generally, the date prescribed for the payment of the tax is the due date of the return (without regard to extensions of time for filing). (R&TC, § 19001.) Appellant did not remit payment until January 20, 2023, 21 months after the original due date of April 15, 2021; therefore, FTB properly imposed the late-payment penalty.³

The late-payment penalty may be abated if the taxpayer shows that the failure to make a timely payment of tax was due to reasonable cause and was not due to willful neglect. (R&TC, § 19132(a)(1).) 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. (*Appeal of Rougeau*, 2021-OTA-335P). The taxpayer bears the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Ibid.*) As to appellant's burden, the applicable standard of proof is by

¹ As of the Notice date, appellant's payment was seven months late. Thus, the late-payment penalty was calculated as 5 percent of the tax due ($\$19,227 \times .05 = \961.35) plus one-half of 1 percent of the tax due multiplied by seven months ($\$19,227 \times .005 \times 7 = \672.95). (See R&TC, § 19132(a)(2).)

² As of the payment date, appellant's payment was 21 months late. Thus, the late-payment penalty was calculated as 5 percent of the tax due ($\$19,227 \times .05 = \961.35) plus one-half of 1 percent of the tax due multiplied by 21 months ($\$19,227 \times .005 \times 21 = \$2,018.84$). (See R&TC, § 19131(a)(2).)

³ FTB postponed the deadline for filing 2020 tax returns and paying tax from April 15, 2021, to May 17, 2021, due to the COVID-19 pandemic. (See FTB, State Tax Deadline for Individuals Postponed until May 17, 2021, news release (March 19, 2021) [<https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2021-03-state-tax-deadline-for-individuals-postponed-until-may-17-2021.html>].) Appellant did not pay by the postponed due date, so the late-payment penalty is calculated from the original due date.

a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(b).) To meet this evidentiary standard, a taxpayer must establish by documentation or other evidence that the circumstances asserted by the taxpayer are more likely than not to be correct. (*Appeal of Rougeau, supra.*) Unsupported assertions cannot satisfy the taxpayer's burden of proof. (*Appeal of Moren, 2019-OTA-176P.*)

Appellant asserts that reasonable cause exists to abate the late-payment penalty because her husband passed away in early 2020, and she had substantial health issues and was "mostly bed ridden" throughout 2020 and 2021. In support of her claim appellant provided to FTB a letter from a doctor and a list of appellant's "critical medical conditions" as of January 13, 2023. The letter is undated but is signed by the same medical doctor who signed the list of medical conditions and is presumably dated the same day. The letter states that appellant "is unable to undergo any depositions." The list of conditions is addressed to a person at a partnership, not to FTB.

Although appellant has clearly been struggling with critical medical issues along with the loss of her husband, appellant has not established that those issues caused her to make a late payment of tax for the 2020 taxable year. A list of medical health issues in January of 2023 does not establish that appellant was unable to handle her financial affairs in 2021 when the payment of tax was due. FTB invited appellant to submit additional documentation that would show from what medical issues she suffered in 2021 that kept her from paying tax on time, but appellant did not respond. In its opening brief, FTB states, "Should appellant provide the requested documentation, FTB may reconsider its position." It is worthy of note that appellant chose not to file a reply brief providing additional documentation. Moreover, although appellant claims she was unable to manage her financial affairs in 2021, OTA's record reflects that her 2020 tax return was timely filed within the automatic extension period. FTB's Notice was sent to appellant a little more than a month after the return was filed. Appellant does not explain how her medical issues caused her to be unable to pay even though her return was prepared and filed on time. For the foregoing reasons, OTA finds that appellant has not established reasonable cause to abate the late-payment penalty.

Issue 2: Has appellant 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. R&TC section 19136 incorporates IRC section 6654 into California law subject to certain exceptions and modifications not relevant here. No provision in the IRC or R&TC allows the estimated tax

penalty to be abated based solely on a finding of reasonable cause. As a result, there is no general reasonable cause exception to imposition of the estimated tax penalty. (*Appeal of Johnson*, 2018-OTA- 119P.) The estimated tax penalty is mandatory unless the taxpayer establishes that a statutory exception applies.⁴ (*Appeal of Saltzman*, 2019-OTA-070P.) The taxpayer bears the burden of proving that penalty abatement is warranted. (*Ibid.*)

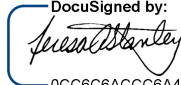
Appellant does not present arguments or evidence with respect to the estimated tax penalty. Appellant’s only contentions are those discussed above, which are reasonable cause arguments. As noted, the law does not allow for waiver of the estimated tax penalty based solely on reasonable cause. Thus, appellant has failed to establish a basis to abate the penalty.

HOLDINGS

1. Appellant has not established reasonable cause to abate the late-payment penalty.
2. Appellant has not established a basis to abate the estimated tax penalty.


DISPOSITION

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

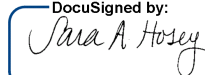
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 Teresa A. Stanley
 Administrative Law Judge

We concur:

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 Josh Lambert
 Administrative Law Judge

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 Sara A. Hosey
 Administrative Law Judge

Date Issued: 12/12/2024

⁴ An exception applies where the underpayment of estimated taxes was caused by a casualty, disaster, or other unusual circumstances, such that imposition of the penalty would be against equity and good conscience. (IRC, § 6654(e)(3)(A).) Another exception applies to newly retired or disabled individuals: the penalty may be waived if the taxpayer either retired after having attained age 62 or became disabled in the taxable year for which estimated payments were required to be made or in the taxable year preceding such taxable year, if the underpayment of estimated taxes was due to reasonable cause and not willful neglect. (IRC, § 6654(e)(3)(B).)