

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
D. CAMPBELL) OTA Case No. 240115161
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OPINION

Representing the Parties:

For Appellant: LaQuanna McDowell, E.A.

For Respondent: Ariana Macedo, Graduate Legal Assistant

S. KIM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, D. Campbell (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claims for refund of \$2,977.75, \$1,060.53,¹ and \$1,224.50² for the 2012, 2018, and 2020 tax years, respectively.

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).

ISSUES³

1. Whether appellant has demonstrated reasonable cause to abate the late filing penalties for 2012 and 2020.
2. Whether appellant has demonstrated reasonable cause to abate the late payment penalty for 2018.
3. Whether appellant has established a basis to abate the underpayment of estimated tax penalty (estimated tax penalty) for 2020.

¹ For the 2018 tax year, FTB issued two letters denying appellant’s refund claim. One letter denied an amount of \$625.54, and another letter denied an amount of \$434.99.

² For the 2020 tax year, FTB also issued two letters denying appellant’s refund claim. One letter denied an amount of \$1,128.50, and another letter denied an amount of \$96.00.

³ Appellant has not provided specific arguments or evidence with respect to interest. Thus, interest will be not addressed further in this Opinion.

FACTUAL FINDINGS

2012 Tax Year

1. Appellant untimely filed a 2012 California Resident Income Tax Return (Form 540) reporting tax due of \$11,911.
2. FTB imposed a late filing penalty of \$2,977.75.
3. Appellant made several payments from May 7, 2021, through January 27, 2023.
4. Appellant timely filed a claim for refund of the late filing penalty.
5. FTB denied appellant's claim for refund for 2012.

2018 Tax Year

6. Appellant timely filed a 2018 Form 540 reporting tax due of \$2,920.
7. Appellant did not remit any payment with the filing.
8. FTB imposed a late payment penalty of \$625.54.
9. Appellant made several payments from October 28, 2019, through March 13, 2023.
10. Appellant timely filed a claim for refund.
11. FTB denied appellant's claim for refund for 2018.

2020 Tax Year

12. Appellant untimely filed a 2020 Form 540 reporting tax due of \$4,514 and self-reported an estimated tax penalty of \$97.
13. FTB imposed a late filing penalty of \$1,128.50.
14. Appellant made several payments from November 8, 2021, through March 13, 2023.
15. Appellant timely filed a claim for refund.
16. FTB denied appellant's claim for refund for 2020.
17. Appellant timely filed this appeal.

DISCUSSION

Issue 1: Whether appellant has demonstrated reasonable cause to abate the late filing penalties for 2012 and 2020.

R&TC section 19131 imposes a late filing penalty when a taxpayer fails to file a tax return on or before its due date, unless the taxpayer establishes that the late filing was due to reasonable cause and was not due to willful neglect. When respondent imposes a penalty, the law presumes that the penalty was imposed correctly. (*Appeal of Xie*, 2018-OTA-076P.) The burden of proof is on the taxpayer to provide credible and competent evidence supporting a

claim of reasonable cause. (*Ibid.*) To establish reasonable cause, a taxpayer must show that the failure to timely file returns occurred despite the exercise of ordinary business care and prudence, or that cause existed as would prompt an ordinarily intelligent and prudent businessperson to have so acted under similar circumstances. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.) Illness or other personal difficulties may be considered reasonable cause if the taxpayer presents credible and competent proof that they were continuously prevented from filing a tax return. (*Appeal of Head and Feliciano*, 2020-OTA-127P.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of GEF Operating, Inc.*, *supra.*)

Here, appellant does not dispute the computation or imposition of the late filing penalty. Instead, appellant argues that there was reasonable cause for the late filings because she had financial hardships and did not have enough money to cover her expenses and other responsibilities. Appellant asserts that she suffered from various health issues, and that she contracted COVID-19 in 2020 and 2021.

However, appellant has not provided any evidence to support her assertion that she had financial hardships or that she suffered from various illnesses which continually prevented her from filing a tax return. (*Appeal of Head and Feliciano*, *supra.*) Appellant did not explain how COVID-19, other illnesses, or financial hardships caused her to late file her 2012 and 2020 tax returns. Appellant's unsupported assertions are not sufficient to satisfy appellant's burden of proof to establish reasonable cause for the late filings. (*Appeal of GEF Operating, Inc.*, *supra.*) Therefore, appellant has failed to demonstrate reasonable cause to abate the late filing penalties.

Issue 2: Whether appellant has demonstrated reasonable cause to abate the late payment penalty for 2018.

R&TC section 19132 imposes a 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. In the case of an individual, payment of the amount shown as due on the return must be made on or before the 15th day of the fourth month following the close of its taxable year (determined without regard to any extension of time for filing the return). (R&TC, § 19001.) For the 2018 tax year, the payment due date was April 15, 2019.

When FTB imposes a penalty, it is presumed that the penalty was imposed correctly. (*Appeal of Xie*, *supra.*) However, 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, the taxpayer must

demonstrate that the failure to timely pay the proper amount of tax occurred, despite the exercise of ordinary business care and prudence or that cause existed as would prompt an ordinarily intelligent and prudent businessperson to have acted similarly under the same circumstances. (*Appeal of Triple Crown Baseball LLC*, 2019-OTA-025P.)

A failure to pay will be considered to be due to reasonable cause to the extent that the taxpayer has made a satisfactory showing that he or she exercised ordinary business care and prudence in providing for payment of his or her tax liability and was nevertheless either unable to pay the tax or would suffer an undue hardship (as described in Treasury Regulation section 1.6161-1(b)) if he or she paid on the due date. (Treas. Reg. § 301.6651-1(c)(1).) An “undue hardship” is defined in Treasury Regulation section 1.6161-1(b) as “more than an inconvenience to the taxpayer,” and requires a “substantial financial loss” and not merely a “general statement of hardship.”

Here, appellant does not dispute the computation or imposition of the late payment penalty. Appellant again argues that there was reasonable cause for the late payment because she had financial hardship and suffered from various illnesses. However, appellant has not provided any evidence to support her assertions. Appellant’s unsupported assertions are not sufficient to satisfy appellant’s burden of proof to establish reasonable cause for the late payment of tax. (*Appeal of GEF Operating, Inc., supra.*) Therefore, appellant has failed to demonstrate reasonable cause to abate the late payment penalty.

Issue 3: Whether appellant has established a basis to abate the underpayment of estimated tax penalty for 2020.

California conforms to Internal Revenue Code (IRC) section 6654 and imposes an estimated tax penalty for the failure to timely make estimated income tax payments. (R&TC, § 19136(a); IRC, § 6654.) The estimated tax penalty is similar to an interest charge and generally applies from the due date of the estimated tax payment until the date it is paid. (IRC, § 6654(b)(2).) There is no reasonable cause exception to the imposition of the estimated tax penalty, although a few limited statutory exceptions to the penalty exist.⁴ (*Appeal of Mazdyasni*, 2018-OTA-049P.)

Here, appellant argues there is reasonable cause to abate the estimated tax penalty. However, there is no reasonable cause exception to the estimated tax penalty. Appellant does

⁴ For example, R&TC sections 19147 and 19148 provide for some exceptions to the imposition of the estimated tax penalty, which are not implicated in this appeal.


not argue, and the evidence does not establish, that any of the statutory exceptions apply to this appeal. Therefore, appellant has failed to establish a basis to abate the estimated tax penalty.

HOLDINGS


1. Appellant has failed to demonstrate reasonable cause to abate the late filing penalties for 2012 and 2020.
2. Appellant has failed to demonstrate reasonable cause to abate the late payment penalty for 2018.
3. Appellant has failed to establish a basis to abate the estimated tax penalty for 2020.


DISPOSITION

OTA sustains FTB’s action denying appellant’s claims for refund for the 2012, 2018, and 2020 tax years.

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 Steven Kim
 Administrative Law Judge

We concur:

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 Amanda Vassigh
 Administrative Law Judge

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 Teresa A. Stanley
 Administrative Law Judge

Date Issued: 12/13/2024