

FACTUAL FINDINGS

1. On October 15, 2021, appellants filed a timely California Resident Income Tax Return (Form 540) for the 2020 tax year. After applying total payments, appellants reported tax due of \$21,174 and self-assessed an estimated tax penalty of \$48. Appellants remitted the payment in full on October 18, 2021.
2. On November 5, 2021, FTB issued a State Income Tax Balance Due Notice, informing appellants that they owed total penalties of \$1,741.92, which consisted of a late payment penalty of \$1,693.92 and an estimated tax penalty of \$48. The notice required appellants to remit payment by November 20, 2021.
3. On November 29, 2021, appellants untimely remitted payments that satisfied the total amount due under the State Income Tax Balance Due Notice. Thereafter, appellants submitted a refund claim to abate the total penalties of \$1,741.92.
4. FTB denied appellants' claim for refund.
5. Appellants filed this timely appeal.
6. FTB submits the Estimate Penalty Computation Detail Display, showing that the total installment required for the 2020 tax year is \$16,223.90 (\$4,867.17 Q1 + \$6,489.56 Q2 + \$4,867.17 Q4). The Estimate Penalty Computation Detail Display also shows that appellants made quarterly estimated tax payments totaling \$10,092 (\$3,027.60 Q1 + \$4,036.80 Q2 + \$3,027.60 Q4) for the 2020 tax year. Additionally, FTB submits 2020 Tax Year Detail showing that appellants timely remitted an extension payment of \$50,000, with an effective date of April 15, 2021.
7. Appellants submit an Income Tax Summary, which shows that the total tax liability for the 2019 tax year was \$14,749.

DISCUSSION

Issue 1: Whether appellants have established reasonable cause to abate the late payment penalty.

R&TC section 19132 imposes a penalty when taxpayers fail to pay the tax shown on a 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.) The due date for appellants' payment of tax for the 2020 tax year was

May 17, 2021.¹ While FTB allows an automatic six-month extension to file a return if the return is filed within six months of the original due date, an extension of time to file the return is not an extension of time to pay. (R&TC, § 18567; Cal. Code Regs., tit. 18, § 18567.) FTB imposed the late payment penalty because appellants did not remit full payment of their tax liability until October 18, 2021. The penalty is presumed to have been imposed correctly, and the taxpayers must demonstrate that the late payment resulted from reasonable cause and not willful neglect. (R&TC, § 19132; *Appeal of Xie*, 2018-OTA-076P.)

To establish reasonable cause, the taxpayers must demonstrate that the failure to timely pay the proper amount of tax occurred despite the exercise of ordinary business care and prudence. (*Appeal of Triple Crown Baseball LLC*, 2019-OTA-025P.) The taxpayers bear the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Appeal of Moren*, 2019-OTA-176P.) The applicable standard of proof is by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(b).)

Appellants do not dispute that they made a late payment of tax or that FTB correctly computed the tax. Thus, the only issue is whether appellants have demonstrated reasonable cause for their failure to timely pay their required taxes in full. Here, appellants assert that reasonable cause exists to abate the late payment penalty based on the following: (1) although they were unaware that California law differed from federal law, they acted in good faith and made a diligent effort to calculate their long-term capital gains for California tax purposes; (2) they paid more than four times the tax shown on the prior year 2019 tax return by the May 17, 2021 due date; (3) they timely remitted their tax liability by the October 15, 2021 extended due date for the 2020 tax year; (4) they have an established history of timely tax compliance, including overpayments in other tax years not at issue here; (5) the COVID-19 pandemic impacted their ability to accurately estimate their state tax obligations; and (6) FTB unreasonably delayed its decision to deny their claim for refund. However, OTA finds that none of appellants' arguments establish reasonable cause for the late payment of tax.

As to the first argument, appellants assert that they miscalculated the long-term capital gains due to the mistaken belief that California conforms to the federal treatment of applying a preferential rate to such gains. However, reasonable cause requires a showing of ordinary

¹ In response to COVID-19, pursuant to R&TC section 18572(b), FTB postponed to May 17, 2021, the 2020 individual tax filing and payment due dates. (See <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2021-03-state-tax-deadline-for-individuals-postponed-until-may-17-2021.html>; IRS Notice 2021-21.) FTB's postponement did not change the original due date for the 2020 returns, upon which the automatic six-month extension to file was based, and the extension expired on October 15, 2021. (*Appeal of Bannon*, 2023-OTA-096P.)

business care and prudence, which appellants failed to demonstrate. Appellants provide no evidence of efforts to verify their belief, such as by consulting a tax professional or reviewing California tax laws specifically to estimate their tax liability based on available information. Taxpayers' errors due to oversight, even if innocent, generally do not constitute reasonable cause for penalty abatement purposes. (*Appeal of Friedman*, 2018-OTA-077P.) Furthermore, the taxpayers' difficulty in determining income with exactitude does not negate the requirement that the taxpayers make payments of tax based upon a reasonably accurate estimate of their tax liability. (*Appeal of Rougeau*, 2021-OTA-335P.) Here, appellants' error attributable to an innocent oversight, particularly one that could have been clarified through reasonable efforts, does not constitute reasonable cause.

As to appellants' second argument, appellants argue that they paid over four times the tax indicated on the previous year's 2019 tax return by the postponed due date of May 17, 2021. Although appellants paid over four times the tax as indicated from the previous 2019 tax year's liability, it does not indicate that the failure to timely pay the proper amount of tax occurred despite the exercise of ordinary business care and prudence. (See *Appeal of Triple Crown Baseball LLC*, *supra*.) As previously discussed, there is no evidence in the record that shows that appellants made any effort to verify whether all income and tax rates were properly applied for the payment of California tax before the May 17, 2021 postponed due date. As such, the late payment penalty cannot be abated based on this argument.

With respect to the third argument, appellants assert that they timely remitted their tax liability by the October 15, 2021 extended due date. However, for the same reason as previously stated, appellants' third argument does not establish reasonable cause. To reiterate, while FTB allows an automatic six-month extension to file a return, an extension of time to file the return is not an extension of time to pay. (R&TC, § 18567; Cal. Code Regs., tit. 18, § 18567.) Again, the evidence simply does not demonstrate that the failure to timely pay the proper amount of tax occurred despite the exercise of ordinary business care and prudence. (See *Appeal of Triple Crown Baseball LLC*, *supra*.)

As to appellants' fourth argument, appellants provide evidence of their history of timely tax compliance, including consistent overpayments in other tax years not at issue. OTA commends appellants for their good history of timely tax compliance. However, neither the California Legislature nor FTB has adopted a penalty abatement program based on good

standing of a taxpayer's history of timely filing and paying California taxes.² (See *Appeal of Scanlon*, 2018-OTA-075P.) OTA is bound to apply the law as written and does not have the authority to grant relief that is not expressly permitted under California statutes or regulations. As such, appellants' argument with regard to their history of timely tax compliance and overpayments in other tax years cannot be used as a basis for abatement of the late payment penalty at issue.

Regarding appellants' fifth argument, appellants assert that there were disruptions caused by the COVID-19 pandemic, which impacted their ability to accurately estimate their state tax obligations. However, unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Porreca*, 2018-OTA-095P). Here, appellants did not provide any evidence to show that they exercised ordinary business care and prudence in ensuring that their 2020 tax obligations were timely paid by the May 17, 2021 postponed deadline. Accordingly, this argument does not establish reasonable cause.

Lastly, in response to appellants' sixth argument, appellants' assertion that FTB unreasonably delayed its decision to deny the claim for refund is not relevant to whether reasonable cause exists. Here, appellants have not provided evidence to demonstrate how the alleged delay impacted appellants' ability to make a timely payment or contributed to the underpayment in the first place. Based on the foregoing, appellants have not established reasonable cause to abate the late payment penalty.

Issue 2: Whether the estimated tax penalty should be abated.

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 in that it is calculated by applying the applicable interest rate to the underpayment of estimated tax. (See

² R&TC section 19132.5 provides for a one-time abatement of the late payment penalty for individual taxpayers with a good tax compliance history. The statute, which was enacted in 2022 (Stats. 2022, ch. 55, § 10), applies only to requests for abatement made for tax years beginning on or after January 1, 2022. (R&TC, § 19132.5(f).) Appellants' request, which is made for a penalty relating to their 2020 tax year, is therefore ineligible for abatement under this provision.

IRC, § 6654(b)(2).) The estimated tax penalty is mandatory unless the taxpayers establish that a statutory exception applies.³ (*Ibid.*)

The estimated tax penalty does not apply if a taxpayer timely makes estimated tax payments equal to specified percentages of the “required annual payment” amount. (IRC, § 6654(d); R&TC, § 19136.1.) The “required annual payment” is defined as the lesser of: (i) 90 percent of the tax shown on the current year tax return (current year safe harbor rule), or (ii) 100 percent of the tax shown on the prior year tax return (prior year safe harbor rule). (IRC, § 6654(d)(1)(B)(i)-(ii).)⁴ If the adjusted gross income shown on the prior year tax return exceeds \$150,000, the taxpayer must pay 110 percent of the tax shown on the prior year tax return to qualify for the prior year safe harbor rule. (IRC, § 6654(d)(1)(C)(i).)

Appellants argue that they paid over four times the tax indicated on the previous year’s 2019 tax return by the postponed due date of May 17, 2021, and therefore, the estimated tax penalty for 2020 tax year should be abated. On appeal, there is no dispute by both parties that the prior year’s tax was \$14,749. Furthermore, appellant does not dispute, and evidence in the record does not show that the adjusted gross income on the prior year’s 2019 tax return did not exceed \$150,000. Accordingly, appellants must remit total estimated tax payments of \$16,223.90 (110 percent of \$14,749).⁵ However, the evidence reflects that appellants made estimated tax payments totaling only \$10,092, which is \$6,131.90 less than the required annual payment amount. Although appellants made an extension payment of \$50,000 with an effective date of April 15, 2021, this payment does not qualify as an estimated tax payment for purposes of assessing the estimated tax penalty. Here, appellants do not argue, and the evidence does not establish, that these estimated tax payments totaling \$10,092 satisfied either the (i) current

³ Under IRC section 6654(e)(3)(A), the IRS (or here, FTB) may waive the addition to tax, i.e., estimated tax penalty, if it determines that, “by reason of casualty, disaster, or other unusual circumstances the imposition of such addition to tax would be against equity and good conscience.” Second, under IRC section 6654(e)(3)(B), the addition to tax may be waived if the IRS (or here, FTB) determines that (i) during the applicable tax year or the preceding tax year, the taxpayer either retired after having attained age 62, or became disabled, and (ii) the underpayment was due to reasonable cause and not due to willful neglect. However, appellants do not argue or provide evidence that either of these provisions is applicable. Therefore, OTA does not address them further.

⁴ Under California law, the prior year safe harbor rule does not apply if the individual taxpayer’s adjusted gross income for the current year is equal to or greater than \$1 million. (R&TC, § 19136.3.)

⁵ Here, 110 percent of the prior year’s tax is \$16,223.90 ($\$14,749 \times 1.10$), while 90 percent of the current year’s tax is \$76,023.90 ($\$84,471 \times 0.90$). Since \$16,223.90 is the lesser amount, it represents the required annual estimated tax payment for purposes of the safe harbor provisions for the estimated tax penalty. (IRC, §§ 6654(d)(1)(B)(i)-(ii), 6654(d)(1)(C)(i).)

year safe harbor rule or (ii) the prior year safe harbor rule. (IRC, §§ 6654(d)(1)(B)(i)-(ii), 6654(d)(1)(C)(i).) Therefore, FTB properly imposed the estimated tax penalty.

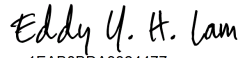
Appellants also make the same reasonable cause argument for abatement of the estimated tax penalty as they do for the late payment penalty. However, unlike the late payment penalty, there is no authority to abate the estimated tax penalty based solely on reasonable cause. (See *Appeal of Scanlon, supra.*) Therefore, OTA need not discuss appellants' reasonable cause arguments as it relates to this penalty, and the estimated tax penalty cannot be abated.

HOLDINGS

1. Appellants have not established reasonable cause to support the abatement of late payment penalty.
2. Appellants have not established grounds to support the abatement of the estimated tax penalty.

DISPOSITION

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

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Eddy Y.H. Lam
Administrative Law Judge

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