

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 230613508
Y. MANDELBAUM)
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OPINION

Representing the Parties:

For Appellant: Y. Mandelbaum
For Respondent: Yadi Li, Graduate Student Assistant
Alisa Pinarbasi, Attorney

V. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Y. Mandelbaum (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$2,099.31 for the 2021 tax year.

Appellant elected to have this appeal determined pursuant to the procedures of the Small Case Program. Those procedures require the assignment of a single administrative law judge. (Cal. Code Regs., tit. 18, § 30209.05.) Office of Tax Appeals (OTA) Administrative Law Judge Veronica I. Long held an oral hearing for this matter electronically on August 14, 2024. At the conclusion of the hearing, the record was closed and this matter was submitted for an opinion.

ISSUES¹

1. Whether appellant has established a basis to abate the late payment penalty.
2. Whether appellant has established a basis to abate the underpayment of the estimated tax penalty (estimated tax penalty).

¹ Appellant also requested interest abatement but does not provide any arguments or evidence showing that interest should be abated under R&TC sections 19104 and 21012. (See also R&TC §§ 19101.) Therefore, appellant has not shown that interest should be abated.

FACTUAL FINDINGS

1. On April 14, 2022, appellant made a \$2,000 payment to FTB.
2. On October 14, 2022, appellant filed a California Nonresident or Part-Year Resident Income Tax Return Form 540NR (return) reporting total tax of \$23,590. After application of appellant's \$2,000 payment to her 2021 account, appellant reported \$21,590 of tax due and included a check for \$21,590 with the return.
3. On November 7, 2022, FTB issued appellant a Notice of Tax Return Change - Revised Balance imposing a late payment penalty and an estimated tax penalty.
4. Appellant paid the penalties and filed a claim for refund, requesting penalty abatement.
5. FTB denied appellant's claim for refund, and this timely appeal follows.

DISCUSSION

Issue 1: Whether appellant has established a basis to abate the late payment penalty.

California imposes a penalty for the failure to pay the amount shown as due on a return on or before the due date of the return, unless it is shown that the late payment is due to reasonable cause and not willful neglect. (R&TC, § 19132(a)(1).) Appellant does not contest the imposition or computation of the late payment penalty but makes reasonable cause type arguments that it should be abated.

When FTB imposes a penalty, the law presumes that the penalty was imposed correctly, and the taxpayer has the burden of proof to show that reasonable cause exists to support abatement of the penalty. (*Appeal of Xie*, 2018-OTA-076P.) 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 Moren*, 2019-OTA-176P.) The taxpayer bears the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Ibid.*)

Where a taxpayer asserts reasonable cause based on a lack of information, such as here, a taxpayer must demonstrate that (1) the taxpayer was unable to reasonably estimate the taxpayer's tax liability without the information, and (2) the taxpayer did not have, and could not have, obtained the necessary information prior to the payment of the taxpayer's tax liability. (See

Appeal of Moren, supra.) Asserted lack of documentation or difficulty in calculating a tax liability does not, by itself, constitute reasonable cause for a late payment of tax. (*Ibid.*)

Appellant contends that he is a New York resident and his California tax liability arose from a distribution from an estate in California. Appellant asserts that the late payment occurred because he was not involved in managing the estate and could not obtain information to learn whether the distribution was taxable by the tax due date. Appellant asserts that he contacted the estate multiple times and did not receive a response.

Appellant has not provided evidence in support of his argument, such as emails or phone records. In addition, appellant declined the opportunity to provide sworn testimony in support of his assertions during the oral hearing. OTA regulations provide that factual findings on any material disputed fact shall not be based solely on unsworn statements made by a party during the appeal proceedings. (Cal. Code Regs., tit. 18, § 30214(f)(5).) OTA is therefore unable to determine whether appellant was unable to reasonably estimate his tax liability due to a lack of information and whether appellant made any effort to obtain that information prior to the payment deadline. Accordingly, appellant has not shown reasonable cause for abating the late payment penalty.

In addition, appellant requests one-time abatement of the penalty and interest. R&TC section 19132.5 provides for a one-time abatement of the late payment penalty (but not interest) for an individual taxpayer 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).) Appellant's request, which is made for a penalty relating to his 2021 tax year, is therefore ineligible for abatement under this provision.

Issue 2: Whether appellant has established a basis to abate the estimated tax penalty.

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. Appellant does not dispute the imposition or computation of the estimated tax penalty but make reasonable cause type arguments that the penalty should be abated.

There is no provision in the IRC or R&TC that allows the estimated tax penalty to be abated based solely on a finding of reasonable cause. As a result, there is no general reasonable

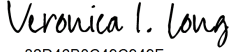
cause exception to imposition of the estimated tax penalty. (*Appeal of Saltzman*, 2019-OTA-070P.) The estimated tax penalty is mandatory unless the taxpayer establishes that a statutory exception applies. (*Ibid.*) Appellant has not asserted, and the facts do not support, that a statutory exception applies. Accordingly, appellant has not established a basis to abate the estimated tax penalty.

HOLDINGS

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

DISPOSITION

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

Signed by:

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Veronica I. Long
Administrative Law Judge

Date Issued: 10/3/2024