

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
N. CHERNICK) OTA Case No. 230312894
)
)
)
)

OPINION

Representing the Parties:

For Appellant: N. Chernick
For Respondent: Arathi Ramalingam, Attorney
Christopher T. Tuttle, Attorney

V. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, N. Chernick (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$9,576.53¹ for the 2021 tax year.

Office of Tax Appeals (OTA) Panel Members Veronica I. Long, Natasha Ralston, and Steven Kim held a virtual oral hearing for this matter on May 22, 2025. At the conclusion of the hearing, the record was closed, and this matter was submitted for an opinion pursuant to California Code of Regulations, title 18, section 30209(b).

ISSUES

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

¹ FTB issued two claim denial letters, one for \$7,614.53 for the late payment penalty and the other for \$1,962 for the underpayment of the estimated tax penalty (estimated tax penalty). While the \$1,962 claim denial of the estimated tax penalty was not included in appellant’s appeal letter, upon review, it appears that appellant intended to appeal both denials.

² Although this issue was not included in the Minutes and Orders issued in this appeal, upon further review of appellant’s appeal letter, it appears that appellant intended to appeal both the late payment penalty and the estimated tax penalty.

FACTUAL FINDINGS

1. On September 8, 2022, appellant made a payment of \$58,327 to FTB. Shortly thereafter, on September 13, 2022, appellant filed his 2021 California income tax return (Form 540) self-assessing interest, a late payment penalty, and an estimated tax penalty. Appellant's September 8, 2022 payment and withholdings were sufficient to cover appellant's tax liability plus \$800, but did not fully satisfy the penalties and interest due on appellant's account.
2. FTB issued appellant a State Income Tax Balance Due Notice and later, an Income Tax Due Notice, informing appellant of the balance due on his account.
3. On November 30, 2022, appellant made a payment to FTB satisfying the balance. Thereafter, appellant requested a refund of the late payment and estimated tax penalties. Appellant's claim for refund stated that he was financially unable to pay the tax due because of ongoing spousal support, child support, legal expenses, and other associated expenses, while at the same time his income was dependent on a fund whose performance suffered due to the COVID-19 pandemic. As support, appellant provided copies of a court order from October 2019 and a court order from October 2020 relating to the support ordered and copies of legal invoices from his attorney.
4. FTB denied appellant's claim in two separate claim denial letters. This timely appeal follows.

DISCUSSION

Issue 1: Whether appellant has established reasonable cause to support abatement of the late payment penalty.

Appellant does not contest the imposition or computation of the late payment penalty but contends that there is reasonable cause to abate the penalty because he experienced financial hardship and encountered difficulty in identifying his income due to ongoing divorce proceedings.

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).)³ To establish reasonable

³ Although there are no FTB regulations interpreting R&TC section 19132, that section is patterned after Internal Revenue Code section 6651. Therefore, the interpretation and effect given the federal provision by the federal courts and administrative bodies are relevant in determining the proper construction of the California statute. (*Andrews v. Franchise Tax Bd.* (1969) 275 Cal.App.2d 653, 658; *Rihn v. Franchise Tax Bd.* (1955) 131 Cal.App.2d 356, 360.)

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 Scanlon*, 2018-OTA-075P.) The taxpayer bears the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Appeal of Triple Crown Baseball*, 2019-OTA-025P.)

Financial hardship may constitute reasonable cause where the taxpayer establishes that they exercised ordinary business care and prudence and were either unable to pay the tax or would suffer an undue hardship by paying by the due date. (See Treas. Reg. § 301.6651-1(c)(1).) The taxpayer's facts and circumstances, including the amount and nature of the taxpayer's expenditures in light of the income (or other amounts) the taxpayer could, at the time of such expenditures, reasonably expect to receive prior to the date prescribed for the payment of the tax, will be considered. (*Ibid.*) Thus, a taxpayer may prove the exercise of ordinary business care and prudence by showing reasonable efforts to conserve sufficient assets in marketable form to satisfy the tax liability. (*Ibid.*) "Undue hardship" is not merely a general hardship, but rather "more than an inconvenience to the taxpayer." (Treas. Reg. § 1.6161-1(b).)

Difficulty in calculating tax liability does not, by itself, constitute reasonable cause for the late payment of tax. (*Appeal of Moren*, 2019-OTA-176P.) A taxpayer's difficulty in determining income with exactitude does not negate the requirement that they make payments of tax based upon a reasonable estimate of their tax liability. (*Ibid.*) A taxpayer must establish that they could not have acquired the information necessary to make an estimate of their tax liability. (*Ibid.*)

Here, although appellant claims to have suffered financial hardship, he has not provided sufficient evidence to substantiate his claim or show that his financial difficulties constitute reasonable cause under the law. Appellant asserts he incurred substantial expenses in 2021, including spousal support, child support, and legal expenses, and that his income was reduced as a result of the pandemic. However, the cumulative expenses asserted by appellant are significantly less than his reported California adjusted gross income.⁴ Absent further evidence of financial hardship, appellant has not provided sufficient evidence supporting his claim that he was financially unable to pay his tax liability at the time it was due. Similarly, appellant has not provided sufficient evidence to establish reasonable cause based on the difficulty in identifying his income. The October 2019 and 2020 court orders provided by appellant set out the support

⁴ Appellant's asserted expenses for 2021 total approximately \$660,500 (comprised of approximately \$180,000 of spousal support, \$309,000 of legal expenses, and half of the \$200,000 in forensic accounting and \$143,000 spent on tuition during the 2021 and 2022 tax years) while appellant's 2021 California adjusted gross income exceeded \$1.3 million.

that appellant is required to pay to his former spouse but does not show that appellant could not have determined or, at a minimum, reasonably estimated the amount of his tax liability by the April 18, 2021 payment due date. Accordingly, appellant has not met his burden of proof to establish entitlement to abatement of the late payment penalty.

In addition, although appellant's late payment penalty on his federal income taxes was abated by the IRS, the record reflects the penalty was abated under the IRS's one-time abatement policy. California law did not provide a similar first-time abatement program for the tax year at issue.⁵ Accordingly, one-time abatement is not available for appellant's 2021 late payment penalty.

Issue 2: Whether appellant has established a basis to support abatement of 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.⁶ Relief from the estimated tax penalty is not available upon a mere showing of reasonable cause or a lack of willful neglect; thus, extenuating circumstances are irrelevant. (*Appeal of Mazdyasni*, 2018-OTA-049P.) Instead, the law allows for abatement of the estimated tax penalty if, by reason of casualty, disaster, or other unusual circumstances, imposition of the penalty would be against equity and good conscience. (*Ibid.*) The exception for unusual circumstances is considerably narrower than reasonable cause, and difficulty in estimating tax liability is not an unusual circumstance for purposes of penalty abatement within the meaning of IRC section 6654(e). (*Ibid.*)

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. However, there is no general reasonable cause exception to the estimated tax penalty, and appellant's asserted difficulty in estimating his tax liability does not constitute unusual circumstances for purposes of the abating the estimated tax penalty. Accordingly, appellant has not established a basis to abate the estimated tax penalty.

⁵ California law provides for a one-time abatement of the late payment penalty for individual taxpayers with a good tax compliance history only for tax years beginning on or after January 1, 2022. (R&TC, § 19132.5(f).)

⁶ R&TC section 19136 incorporates IRC section 6654 subject to certain exceptions, which are not at issue here.

HOLDINGS

1. Appellant has not established reasonable cause to support abatement of the late payment penalty.
2. Appellant has not established a basis to support abatement of the estimated tax penalty.

DISPOSITION

FTB's denial of appellant's claim for refund is sustained.

Signed by:

Veronica I. Long

32D46B0C40C040F...

Veronica I. Long
Administrative Law Judge

We concur:

Signed by:

Natasha Ralston

25F8FE08FF56478...

Natasha Ralston
Administrative Law Judge

DocuSigned by:

Steven Kim

5DD7EE644397430...

Steven Kim
Administrative Law Judge

Date Issued: 7/2/2025