



### FACTUAL FINDINGS

1. Appellant timely filed a 2008 California income tax return, reporting tax due of \$8,061 and an estimated tax penalty of \$279. Appellant did not timely pay the balance due by April 15, 2009.
2. FTB imposed a late payment penalty of \$1,975.25 and notified appellant of the balance due, which included tax, the late payment penalty, and an estimated tax penalty of \$278.59, plus interest. After the balance was not paid, FTB initiated collection action, resulting in the imposition of a collection cost recovery fee of \$217 and a county lien fee of \$20.
3. Appellant requested abatement of the penalties, fee, and interest because of financial hardship, which FTB denied.
4. Appellant paid the balance due and filed a claim for refund, which FTB denied.
5. This timely appeal followed.

### DISCUSSION

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

R&TC section 19132(a) 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 tax. Generally, the date prescribed for the payment of tax is the due date of the return (without regard to extensions of time for filing). (R&TC, § 19001.) 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 Red Vision Systems, Inc.*, 2023-OTA-561P.) 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 Friedman*, 2018-OTA-077P.) Unsupported assertions are insufficient to carry the burden of proof. (*Appeal of Red Vision Systems, Inc.*, *supra.*)

Appellant does not argue that the penalty was improperly calculated or imposed. Appellant contends that he was led to believe that, if he paid his outstanding tax liability from 2008, he would have the opportunity to abate the penalties, fees, and interest. Appellant argues that his inability to pay the balance due arose from the 2008 financial crisis, which caused him financial hardship, and that he should receive abatement of the penalty due to financial hardship that he is experiencing now and since the imposition of the penalty. Appellant asserts that he paid the amount due with a credit card because he did not have cash to pay the amount due.

Inability to pay the tax due to financial hardship may establish reasonable cause to abate the late payment penalty. (*Appeal of Triple Crown Baseball LLC*, 2019-OTA-025P; see Internal Revenue Code (IRC), § 6651; Treas. Reg. § 301.6651-1(c).) Reasonable cause based on financial hardship is explained in federal Treasury Regulation section 301.6651-1(c)(1), which provides that the taxpayer must show the exercise of ordinary business care and prudence, and that the taxpayer was either unable to pay the tax or would suffer an undue hardship by paying by the due date.<sup>2</sup> Treasury Regulation section 301.6651-1(c)(1) further provides that all the facts and circumstances will be considered, 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. Thus, taxpayers can prove ordinary business care and prudence by showing reasonable efforts were made to conserve sufficient assets in marketable form to satisfy the tax liability. (Treas. Reg. § 301.6651-1(c)(1).) Additionally, "undue hardship" is defined in Treasury Regulation section 1.6161-1(b) as meaning "more than an inconvenience to the taxpayer."

Appellant does not provide any evidence to support his contention that the penalty should be abated based on financial hardship. Appellant provides no evidence of the exercise of ordinary business care and prudence, that he was unable to pay the tax or would have suffered an undue hardship by paying by the due date, or that he made reasonable efforts to conserve sufficient assets in marketable form to satisfy the 2008 tax liability. Appellant provides bank statements for the 2024 tax year and an insurance policy loan from 2023, but does not provide evidence from the relevant time period of April 2009, when the payment was due. Therefore, appellant has not shown a basis to abate the late payment penalty.

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

California conforms to 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 applies from the due date of the estimated tax payment until the date it is paid. (IRC, § 6654(b)(2).)

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<sup>2</sup> Although there are no FTB regulations interpreting R&TC section 19132, that section is patterned after Internal Revenue Code section 6651. Therefore, the interpretations of, and effect given to, 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; *Appeal of Rougeau*, 2021-OTA-335P.)

Appellant does not dispute the computation or imposition of the estimated tax penalty. Instead, appellant provides the same reasoning to abate the estimated tax penalty as provided for the late payment penalty, which is financial hardship.

IRC section 6654(e)(3)(A) provides that the taxing agency may waive the estimated tax penalty if it determines that “by reason of casualty, disaster, or other unusual circumstances the imposition of [the estimated tax penalty] would be against equity and good conscience.” The exception for unusual circumstances is considerably narrower than reasonable cause. (*Appeal of Mazdyasni*, 2018-OTA-049P.) IRC section 6654(e)(3)(B) provides that FTB may waive the estimated tax penalty where it determines that: (1) during the tax year for which the estimated payments were required to be made, or the preceding year, the taxpayer either retired after having attained age 62, or became disabled; and (2) the underpayment was due to reasonable cause and not willful neglect.

Appellant argues that his inability to pay the amount due arose from the financial crisis of 2008 and that he suffers from financial hardship. However, appellant does not provide evidence establishing that IRC section 6654(e)(3)(A) applies by showing that the financial crisis of 2008 caused his circumstances to rise to the level of casualty, disaster, or other unusual circumstances such that the imposition of the estimated tax penalty would be against equity and good conscience. Also, the record does not show that IRC section 6654(e)(3)(B) applies because appellant was not 62, did not become disabled, during the tax year for which the estimated payments were required to be made, or the preceding year. Therefore, appellant has not established a basis to abate the estimated tax penalty.

Issue 3: Whether appellant has shown a basis to abate the collection cost recovery fee.

R&TC section 19254(a)(1) requires FTB to impose a collection cost recovery fee when FTB notifies a taxpayer that the continued failure to pay an amount due may result in the imposition of the fee, and the taxpayer fails to timely pay the amount due in response to the notice.

Appellant does not dispute the calculation or imposition of the collection cost recovery fee. Instead, appellant provides the same arguments for the fee as he did for the penalties, including financial hardship. However, once FTB properly imposes the fee, there is no language in the statute that would excuse the fee for any reason, including reasonable cause. (See *Appeal of Auburn Old Town Gallery, LLC*, 2019-OTA-319P.) Therefore, appellant has not shown a basis to abate the fee.

Issue 4: Whether appellant has shown a basis to abate the county lien fee.

R&TC section 19221(a) states that when a taxpayer fails to pay a tax liability by the due date, “the amount thereof, (including any interest, additional amount, addition to tax, or penalty, together with any costs that may accrue in addition thereto) shall thereupon be a perfected and enforceable state tax lien.” Government Code sections 7174(d), 27361, 27361.3, and 27361.4 authorize FTB to collect the various fees associated with recording and releasing a state tax lien, including county lien fees.

Appellant does not dispute the calculation or imposition of the lien fee but rather provides the same arguments for the lien fees as he did for the penalties, including financial hardship. Once FTB properly imposes the lien fee, there is no language in R&TC section 19221 that will excuse the fee under any circumstances, including for reasonable cause. Therefore, appellant has not established a basis to abate the lien fee.

Issue 5: Whether appellant has shown a basis to abate interest.

The imposition of interest is mandatory. (R&TC, § 19101(a); *Appeal of Moy*, 2019- OTA-057P.) Interest is charged from the due date of the tax payment to the date the tax is paid. (R&TC, § 19101(a).) Interest is not a penalty but is compensation for the taxpayer’s use of money after it should have been paid to the state. (*Appeal of Moy, supra.*) There is no reasonable cause exception to the imposition of interest and interest can only be waived in certain limited situations when authorized by law. (*Ibid.*)

To obtain interest relief, appellant must qualify under one of the waiver provisions of R&TC sections 19104 (pertaining to unreasonable error or delay by respondent in the performance of a ministerial or managerial act) or 21012 (pertaining to reasonable reliance on the written advice of respondent). Appellant does not argue for the abatement of interest under those sections but argues that interest should be abated due to financial hardship. Under R&TC section 19112, FTB may abate interest for extreme financial hardship caused by significant disability or other catastrophic circumstance. However, OTA has no jurisdiction to determine whether appellant is entitled to the abatement of interest under R&TC section 19112. (*Appeal of Moy, supra.*) Therefore, appellant has not shown a basis to abate interest.

HOLDINGS

1. Appellant has not shown a basis to abate the late payment penalty.
2. Appellant has not shown a basis to abate the estimated tax penalty.
3. Appellant has not shown a basis to abate the collection cost recovery fee.
4. Appellant has not shown a basis to abate the county lien fee.
5. Appellant has not shown a basis to abate interest.

DISPOSITION

FTB's action is sustained.

Signed by:



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Josh Lambert  
Administrative Law Judge

We concur:

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Erica Parker  
Hearing Officer

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Keith T. Long  
Administrative Law Judge

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