

FACTUAL FINDINGS

1. Appellants used a tax preparer to calculate their returns and payments.
2. On April 4, 2023, appellants paid respondent \$7,000,000 for the 2021 tax year after realizing they had underpaid for the year.
3. Respondent issued an Income Tax Due Notice, imposing a late payment penalty, an estimated tax penalty, and interest.
4. Appellants paid the penalties and interest, satisfying their liability in full.
5. Then, appellants filed a claim for refund based on reasonable cause.
6. Respondent denied appellants' claim for refund. This timely appeal followed.

DISCUSSION

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

R&TC section 19132 provides that a late payment penalty shall be imposed when a taxpayer fails to pay the amount shown as due on the return on or before the due date of the return. This penalty consists of the sum of two parts. These two parts are an underpayment penalty equal to five percent of the unpaid tax, and a monthly penalty equal to one half of a percent of the unpaid tax for each month (or part of a month) that the tax remains unpaid. (R&TC, § 19132(a)(2)(A)-(B).) When respondent imposes a penalty, the law presumes that the penalty was imposed correctly. (*Appeal of Xie*, 2018-OTA-076P.) Here, appellants do not dispute that respondent properly imposed or computed the late payment penalty.

The late payment penalty may be abated if the taxpayer shows that the failure to make timely payments of tax was due to reasonable cause and was not due to willful neglect. (R&TC, § 19132(a)(1).) Here, respondent does not assert that willful neglect is present in this case. Therefore, the remaining issue regarding the late payment penalty is whether appellants have demonstrated reasonable cause for their failure to timely pay their required taxes in full.

The taxpayers bear the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Appeal of Friedman*, 2018-OTA-077P.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Scanlon*, 2018-OTA-075P.) Appellants contend there was reasonable cause for the late payment due to the challenges caused by the COVID-19 pandemic in the 2021 tax year and their reliance on a tax preparer to accurately provide the correct voucher amount for tax payments.

California follows the reasonable cause standard explained in *U.S. v. Boyle* (1985) 469 U.S. 241, 250 (*Boyle*) that a taxpayer's reliance on a tax adviser must involve reliance on substantive tax advice and not on simple clerical duties. (*Appeal of Mauritzson*, 2021-OTA-198P.) *Boyle* states, "It requires no special training or effort to ascertain a deadline and make sure that it is met. The failure to make a timely filing of a tax return is not excused by the taxpayer's reliance on an agent, and such reliance is not 'reasonable cause' for a late filing" ² (*Id.* at p. 252.) It is appellants' duty to make sure the payments are made.

In *Appeal of Scanlon*, *supra*, OTA found that a taxpayer who took almost eight months to notice that a tax payment had not been timely paid did not exercise due care and diligence and was not entitled to a reasonable cause abatement of penalties. As it took appellants almost a year to notice and make the late tax payment, they have not demonstrated that their actions comport with ordinary business care and prudence and are therefore not entitled to a reasonable cause abatement of the late payment penalty.

Issue 2: Whether appellants have established a basis to abate 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. Subject to certain exceptions not relevant to the issues on appeal, R&TC section 19136 incorporates IRC section 6654. R&TC section 19136 imposes a penalty or an addition to tax where an individual fails to timely pay estimated tax. 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. (*Appeal of Johnson*, 2018-OTA-119P.) Appellants do not contest the imposition or calculation of the estimated tax penalty; rather they assert under IRC section 6654(e)(3)(A) that the estimated tax penalty should be waived here because, primarily due to their reliance on expert advice, it would be "against equity and good conscience" to charge the estimated tax penalty.

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 phrase 'casualty, disaster, or other unusual circumstances' generally refers to unexpected events that cause a hardship or loss such that, due to the circumstances, it would be 'against equity and good conscience' to impose the penalty." (*Appeal of Saltzman*, 2019-OTA-070P.)

² "[J]udicial interpretations determining whether reasonable cause existed for failure to file a tax return are persuasive authority for determining whether reasonable cause existed for the failure to pay the tax on time." (*Appeal of Berolzheimer* (86-SBE-172) 1986 WL 22860.)

Appellants' reliance on their tax preparer does not constitute a casualty, disaster, or other unusual circumstance. Rather, it is a common circumstance often cited in support of reasonable cause for penalty abatement. However, there is no general reasonable cause exception to imposition of the estimated tax penalty. (*Ibid.*) Thus, there is no legal basis to abate the estimated tax penalty in this appeal.

Issue 3: Whether appellants have established a legal basis to abate interest.

Imposition of interest is mandatory, and it can only be abated in certain limited situations when authorized by law. (R&TC, § 19101(a); *Appeal of Balch*, 2018-OTA-159P.) Interest is not a penalty, but it is compensation for the taxpayers' use of money after it should have been paid to the state. (*Appeal of Moy*, 2019-OTA-057P.) There is no reasonable cause exception to the imposition of interest. (*Ibid.*) To obtain interest abatement or waiver, appellants must qualify under either R&TC section 19104 or 21012. R&TC section 19104 does not apply here because appellants do not allege, and the evidence does not show, that the interest at issue is attributable, in whole or in part, to any unreasonable error or delay by an officer or employee of respondent when performing a ministerial or managerial act. R&TC section 21012 does not apply because respondent did not provide appellants with any requested written advice. Accordingly, appellants have not established that they are entitled to interest abatement.

HOLDINGS

1. Appellants have not established reasonable cause to abate the late payment penalty.
2. Appellants have not established a basis to abate the estimated tax penalty.
3. Appellants have not established a legal basis to abate interest.

DISPOSITION

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

Signed by:

Heather Boyd

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Heather Boyd
Administrative Law Judge

We concur:

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Tommy Leung

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Tommy Leung
Administrative Law Judge

DocuSigned by:

Sara A. Hosey

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Sara A. Hosey
Administrative Law Judge

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