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7 **BOARD OF EQUALIZATION**

8 **STATE OF CALIFORNIA**

9
 10 In the Matter of the Appeal of:) **HEARING SUMMARY**
 11) **PERSONAL INCOME TAX APPEAL**
 12 **ELLEN GRUBER**¹) Case No. 728277
 13)

	<u>Years</u>	<u>Claims For Refund</u> ²
	2005	\$2,688.59
	2006	\$6,471.47

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 17 Representing the Parties:

18 For Appellant: Tax Appeals Assistance Program (TAAP)³

19 For Franchise Tax Board: Nancy E. Parker, Tax Counsel III

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 23 ¹ Appellant resides in Los Angeles County. Appellant filed a joint return with her then husband, Eduard Gruber, for 2005 and filed a single return for 2006. Appellant and Mr. Gruber were divorced in 2006 and Mr. Gruber passed away in 2011.

24 ² According to respondent, the claim for refund for 2005 consists of the following paid items: a late filing penalty of
 25 \$1,426.00, an underpayment of estimate tax penalty of \$9.38, interest of \$1,066.21, a collection cost recovery fee of
 26 \$155.00, and lien fees of \$32.00. In addition, according to respondent, the claim for refund for 2006 consists of the
 27 following paid items: a late payment penalty of \$2,501.75, an underpayment of estimate tax penalty of \$153.50, interest of
 \$3,583.22, a collection cost recovery fee of \$217.00, and a lien fee of \$16.00. Respondent asserts that the Board's Board
 Proceedings Department's letter dated April 25, 2013, acknowledging the appeal incorrectly reflects that the total amount at
 issue is \$9,164.06, when in fact the total amount at issue is \$9,160.06. (Resp. Opening Br., p. 1, fn. 1.)

28 ³ Appellant filed the appeal letter. Ike I. Song of TAAP filed appellant's reply brief and is currently representing appellant
 in this appeal.

Appeal of Ellen Gruber

NOT TO BE CITED AS PRECEDENT - Document prepared for
 Board review. It does not represent the Board's decision or opinion.

- 1 QUESTIONS: (1) Whether appellant has shown reasonable cause for the abatement of the late
2 filing and late payment penalties.
- 3 (2) Whether appellant has demonstrated that the Franchise Tax Board (FTB or
4 respondent) erred by not abating the underpayment of estimated tax penalties.
- 5 (3) Whether the Board has jurisdiction to review respondent's denial of interest
6 abatement under Revenue & Taxation Code (R&TC) section 19112, and if so,
7 whether respondent properly determined not to abate interest.
- 8 (4) Whether the collection cost recovery fees or the lien fees may be abated.

9 HEARING SUMMARY

10 Background

11 Appellant failed to file a timely 2005 California tax return. Respondent received
12 information through its filing enforcement program, indicating that appellant received income reported
13 on IRS Form 1099 from Coldwell Banker Residential Brokerage Co. and other income from Bank of
14 America and Wells Fargo Bank during 2005. On February 5, 2007, respondent issued a Request for
15 Tax Return to appellant that she file a 2005 return, provide a copy of her 2005 return, or explain why
16 she was not required to file a 2005 return. On February 13, 2007, appellant and her spouse,
17 Eduard Gruber,⁴ filed a 2005 joint return,⁵ reporting adjusted gross income of \$199,850, deductions of
18 \$6,508 and taxable income of \$113,342, resulting in a tax liability of \$6,478. After applying exemption
19 credits of \$174 and estimate payments of \$600, the couple reported a tax due of \$5,704. The couple
20 remitted a payment of \$5,704 when they filed the 2005 joint return. (Resp. Opening Br., p. 2, exhibits
21 A and C.)

22 Respondent processed the couple's 2005 joint return and imposed a late filing penalty of
23 \$1,426.00 and an underpayment of estimated tax penalty of \$9.38 plus interest. After the couple failed
24 to pay the balance due, respondent imposed a collection cost recovery fee of \$155. Respondent

25 _____
26 ⁴ As mentioned above, Mr. Gruber is deceased.

27 ⁵ Respondent no longer has a copy of the joint 2005 return in accordance with R&TC section 19530 and its document
28 retention policy. Respondent obtained information regarding the 2005 account from its electronically-stored data.

1 subsequently recorded two liens and imposed lien fees totaling \$32. The balance due was paid in full
2 after respondent received payments of \$144.00 and \$2,544.59 on June 15, 2010 and December 10,
3 2012, respectively. (Resp. Opening Br., p. 2, exhibit D.)

4 On April 15, 2007, appellant filed a 2006 return, using the single filing status.⁶ On this
5 return, appellant reported adjusted gross income of \$189,695, deductions of \$3,410, and taxable income
6 of \$186,285, resulting in a tax liability of \$15,196. After applying exemption credits of \$189, appellant
7 reported a tax due of \$15,007. Appellant remitted a payment of \$5,000 when she filed the 2006 return.
8 (Resp. Opening Br., p. 2, exhibits E-G.)

9 Respondent processed appellant's 2006 return and imposed a late payment penalty of
10 \$2,501.75 and an underpayment of estimated tax penalty of \$153.50 plus interest. After appellant
11 failed to pay the balance due, respondent imposed a collection cost recovery fee of \$217. Respondent
12 subsequently recorded a lien and imposed a lien fee of \$16. On December 17, 2012, respondent issued
13 appellant a refund of \$2.22 after it received payments of \$736.52 and \$15,744.17 on December 4, 2012
14 and December 17, 2012, respectively. (Resp. Opening Br., p. 3, exhibit G.)

15 Appellant filed a claim for refund dated December 11, 2012, requesting the abatement
16 and refund of the paid penalties, fees, and accrued interest for 2005 and 2006. In a letter to appellant
17 dated January 17, 2013, respondent denied appellant's claim for refund. (Appeal Letter, attachments;
18 Resp. Opening Br., p. 3.)

19 Appellant filed this timely appeal.

20 Contentions

21 Appellant's Contentions

22 Appellant argues that the penalties, fees and accrued interest should be abated due to
23 "catastrophic events leading to hardship in every way." She describes caring for Mr. Gruber who was
24 diagnosed in 2003 with Huntington's disease, which she described as a devastating and "slow
25

26 ⁶ Respondent no longer has a copy of appellant's 2006 return in accordance with R&TC section 19530 and its document
27 retention policy. Respondent obtained information regarding the 2006 account from its electronically-stored data. As
28 discussed below, appellant divorced Mr. Gruber in January 2006 and he died in October 2011.

1 progressive disease.” Appellant asserts that she served as Mr. Gruber’s caregiver and conservator until
2 his death in October 2011, and “caring for him became more and more tragic as the years progressed.”
3 She states that Mr. Gruber’s condition continued to deteriorate to the extent that she was “feeding,
4 bathing, shaving, and dressing him, laundering his clothes and changing his diapers, and putting on his
5 shoes – similar to a ‘mother.’” Attached to the appeal letter are copies of appellant’s December 11,
6 2012 letter to respondent, Mr. Gruber’s death certificate, a judicial conservatorship certificate dated
7 July 9, 2007, appointing appellant as the conservator of Mr. Gruber, in-home service and medical
8 reports concerning Mr. Gruber, and an explanation of Huntington disease. (Appeal Letter,
9 attachments.)

10 Appellant asserts that she and Mr. Gruber previously owned and operated a real estate
11 practice and, in approximately 1998, at the age of 41, Mr. Gruber began to show symptoms of
12 Huntington’s disease, such as lack of energy, constant movement, and a strange gait. Appellant
13 describes in detail Mr. Gruber’s progressive deterioration, symptoms, treatments, hospitalizations, and
14 diagnoses, as well as the extensive care she provided him through the years. According to appellant,
15 Mr. Gruber was arrested for burglary in 2006, and she once had to drive to Las Vegas to bring
16 Mr. Gruber home after he went missing. Appellant indicates that, on the advice of a psychiatrist, she
17 divorced Mr. Gruber in January 2006, to protect her from any liability that may arise from his
18 unpredictable conduct, but she never abandoned him. Appellant asserts that she worked
19 “intermittently” in real estate while being the sole care provider for Mr. Gruber. She also asserts that,
20 during 2005, she “became acquainted with a client, who requested a series of large property
21 transactions in a like-kind exchange pursuant to Internal Revenue Code (IRC) section 1031.”
22 Appellant indicates that she was “[u]ncertain whether she would complete the 1031 transaction, she
23 continuously adjusted to care for her husband, resulting in late filing and payment of 2005 income tax.”
24 (App. Reply Br., pp. 1-2.)

25 Appellant asserts that, after Mr. Gruber was hospitalized during the summer of 2006 in a
26 secure care center after he exhibited dangerous symptoms, including suicidal tendencies, her “finances
27 were in ruins,” she relied on Meals on Wheels and welfare, and “the California Health and Welfare
28 Agency approved appellant’s In-Home Supportive Services at a discounted rate of \$52.20 per hour

1 based on her income.” Appellant also asserts that, during 2006, she “seldom had time to work, but to
2 her surprise, the same client from the previous year asked for her help to sell a major property.” She
3 further asserts that, in October 2006, she “received her only paycheck for the year” and, in 2007, her
4 “income fell below the poverty line,” and she was only able to make a partial payment of her 2006 tax
5 liability due to the “medical and pharmaceutical bills and general living expenses.” Appellant indicates
6 that 2006 was her “best year” as a realtor, and since then, she has “not made enough money to pay
7 taxes unless they were small amounts.” Appellant states that, not even taking into account the economy
8 and the loss of her real estate practice, she has “lost so much” and she asks for help as she grieves for
9 Mr. Gruber “and all the years lost.” (Appeal Letter; App. Reply Br., pp. 2-3.)

10 According to appellant, the IRS assessed penalties “for failing to timely file and pay
11 income taxes for 2005 and 2006,” which she paid. Appellant asserts that she filed a claim for refund
12 with the Internal Revenue Service (IRS) based on hardship and submitted copies of Mr. Gruber’s
13 medical records to the IRS to support her claim of hardship. Appellant also asserts that an IRS agent
14 subsequently came to the couple’s apartment and observed Mr. Gruber and appellant’s living situation.
15 According to appellant, “the agent agreed that appellant’s case was due to hardship.” Appellant asserts
16 that the IRS “reduced the amount of penalty and sent a letter to confirm a refund of \$13,370.03.”
17 Appellant asserts that respondent incorrectly argues that the IRS never provided a reason for reducing
18 appellant’s penalty and refunding her \$13,370.03. Appellant asserts that the February 18, 2013 letter
19 from the IRS provides, “Based on the information you *provided*, we changed your 2006 Form 1040 to
20 correct your penalty charge.” Attached to appellant’s reply brief is a copy of a letter to appellant from
21 the IRS dated February 18, 2013, reflecting, for 2006, a decrease of \$11,694.74 in the federal late
22 payment penalty and a decrease of \$1,675.29 in interest and a refund due of \$13,370.03. (App. Reply
23 Br., pp. 3-5., exhibit K.)

24 Late Filing Penalty

25 Appellant argues that there is reasonable cause for the abatement of the 2005 late filing
26 penalty “because she assumed the role of a sole care-taker to watch over her ill and unpredictable
27 husband.” She argues that she “exercised ordinary and business prudence by prioritizing her activities
28 – mothering her husband and earning money when possible,” which resulted in the untimely filing of

1 the couple's 2005 return. Appellant states that her "failure to file was not the result of willful neglect,
2 but undue hardship, which provides reasonable cause." She contends that she extensively documented
3 her chaotic life during the relevant period and under these circumstances, "an ordinarily intelligent and
4 prudent business person probably would have failed to file income taxes." Appellant asserts that there
5 is no merit to respondent's apparent argument that she chose her role as a caretaker at the sacrifice of
6 timely filing the couple's 2005 return. She contends that her case is distinguishable from the *Appeal of*
7 *Michael J. and Diane M. Halaburka*, 85-SBE-025, decided on April 9, 1985,⁷ because she had no one
8 to depend on while she worked intermittently and bathed, fed, and diapered "her disease[d] husband
9 with a diminished IQ close to that of a child, not waiting for receipts or trying to determine her
10 income." According to appellant, she failed to timely file the couple's 2005 return "due to her daily
11 routines," and her income level increasing from \$113,342 in 2005 to \$186,285 in 2006 "was the result
12 of meeting one rich client." As discussed above, appellant argues that the IRS reduced appellant's
13 federal late filing penalty for 2005 because "appellant's reasonable cause was due to hardship." (App.
14 Reply Br., pp. 3-4.)

15 Late Payment Penalty

16 Appellant argues that, although respondent properly computed the late payment penalty
17 for 2006, she had reasonable cause to pay her 2006 tax liability late "because she was pre-occupied as
18 the sole care-taker of her dying husband" and "her conduct was not on account of willful neglect."
19 Appellant contends that "the IRS approved appellant's refund on grounds of hardship" and respondent
20 incorrectly argues that the IRS abated the penalty of \$13,370.03 for good filing history. She contends
21 that her case is distinguishable from the *Appeal of M.B. and G.M. Scott*, 82-SBE-249, decided on
22 October 14, 1982 and the *Appeal of Robert T. and M.R. Curry*, 86-SBE-048, decided on March 4, 1986,
23 because her "failure to pay was not the result of mere numerical errors that could have been fixed," but
24 rather she "cared for her husband diligently by tying his shoe and pulverizing his food," just "as any
25 businessperson of ordinary intelligence and prudence would[.]" Appellant argues that the burden
26 placed on her due to Mr. Gruber's disease was not merely "an inconvenience." She describes her daily
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28 ⁷ Board of Equalization cases are generally available for viewing on the Board's website (www.boe.ca.gov).

1 life as a caretaker as “a constant state of emergency.” Appellant contends that respondent apparently
2 holds her to a perfect person standard, rather than a reasonable person standard, when it argues that she
3 should have been able to timely pay her 2006 tax liability because she increased her pay by 64 percent
4 from 2005 to 2006. Appellant asserts that her pay increase was due to neither a “liberation in
5 appellant’s daily routine nor improvement in her husband’s quality of life.” Instead, appellant asserts
6 that it was “just luck in a fickle real estate market that is characterized by volatile business cycles.”
7 Appellant states that, while a perfect person “would have timely paid under virtually any
8 circumstance,” her conduct conformed to that of “a person under the reasonable cause test, as
9 evidenced by the language in the Code, [which] involves an ordinarily intelligent and prudent
10 businessperson.” (App. Reply Br., pp. 5-6.)

11 Underpayment of Estimated Tax Penalties

12 Appellant contends that she is entitled to the abatement of the underpayment of
13 estimated tax penalties pursuant to R&TC section 19136 because appellant and Mr. Gruber were
14 disabled in the tax years at issue and the preceding tax years, and the underpayment occurred due to
15 reasonable cause and in the absence of willful neglect. According to appellant, the relevant years for
16 appellant are 2005 and 2006, whereas the relevant years for Mr. Gruber are 2004 and 2005. Appellant
17 asserts that the term disability is not defined in IRC section 6654, but IRC section 409A provides some
18 guidance. Appellant states, “That is, one who is unable to engage in any substantial gainful activity by
19 reason of physical or mental impairment that lasts 12 or more months.” According to appellant,
20 Mr. Gruber’s condition began in 1998 and continued until his death in 2011, and she “could not
21 participate in gainful activity because she suffered from depression and was unable to regularly engage
22 in her line of work.” (App. Reply Br., pp. 6-7.)

23 Interest Abatement

24 Appellant contends that she is entitled to a refund of paid interest due to financial
25 hardship. Appellant argues that the Board has jurisdiction to determine matters involving R&TC
26 section 19112 because this statute does not provide that a refund is disallowed, and “normal taxpayers
27 generally do not have the means to go to court over this type of issue.” Furthermore, appellant
28 contends that it is “inherently unfair” for respondent to argue that only unpaid interest can be abated.

1 Appellant states, “Many taxpayers, who suffer from financial hardship, manage to pay the interest by
2 obtaining a loan or selling their assets with the hope of receiving a refund subsequently.” Appellant
3 contends that, although she received the “assistance of welfare and Meals on Wheels, it was difficult
4 for her to pay hospital bills, court costs, and general living expenses.” (App. Reply Br., p. 7.)

5 Collection Cost Recovery and Lien Fees

6 Appellant does not make any specific arguments in her opening or reply brief with
7 respect to the abatement of the collection cost recovery fees or the lien fees.

8 Respondent’s Contentions

9 Late Filing Penalty

10 Respondent contends that it properly imposed the late filing penalty for 2005 pursuant to
11 R&TC section 19131, because the couple did not file their joint 2005 return by the original due date of
12 April 15, 2006. Respondent states that appellant has not established reasonable cause for the late filing
13 of the couple’s 2005 return. Respondent argues that, although appellant substantiated that her former
14 spouse received medical treatment and was hospitalized in the summer of 2006, she has failed to
15 provide “evidence as to why she was unable to timely file their 2005 return.” (Underscore original.)
16 Respondent asserts that, while caring for Mr. Gruber, appellant earned 64 percent more income in 2006
17 than in 2005 from her realtor business and she thus “could have also chosen to timely file their 2005
18 return when due.” (Resp. Opening Br., pp. 3-5; Resp. Reply Br., pp. 3-4.)

19 Respondent contends that appellant has failed to provide evidence showing that the IRS
20 abated the 2005 late filing penalty due to reasonable cause. Respondent asserts that the IRS has
21 authority under IRC section 6651(a) to abate the federal late filing penalty, and it “has many ways to
22 document that reasonable cause determination in its records or state so in a letter.” Respondent asserts
23 that the couple’s 2005 federal Account Transcript indicates that, in 2007, the IRS abated the 2005
24 federal late filing penalty, but it does not show the reason for the abatement. In addition, respondent
25 asserts that the submitted IRS letter of abatement for 2006 does not indicate that the late filing penalty
26 for 2005 was abated for reasonable cause. Respondent states that the submitted IRS letter refers only to
27 2006, and “respondent cannot follow the IRS determination to abate in this matter, particularly for
28 another tax year than at issue in this appeal.” Respondent asserts that it requested a copy of appellant’s

1 2005 Individual Master File (IMF) from the IRS, but it has not received it. (Resp. Opening Br., pp. 4-5,
2 fn. 4; Resp. Reply Br., pp. 1-2.)

3 Late Payment Penalty

4 Respondent contends that it properly imposed the late payment penalty for 2006
5 pursuant to R&TC section 19132, because appellant only paid \$5,000 of her self-assessed 2006 tax
6 liability of \$15,007 by the payment deadline of April 15, 2007. Respondent asserts that it did not apply
7 appellant's final payment until 40 months past the payment deadline and that it properly calculated the
8 amount of the late payment penalty under R&TC section 19132. Respondent argues that appellant has
9 not established that she failed to pay her 2006 tax obligation despite the exercise of ordinary business
10 care and prudence. Respondent contends that appellant apparently earned sufficient income during
11 2006 to timely pay her 2006 tax liability as she earned 64 percent more income in 2006 than she earned
12 in 2005 and she remitted \$5,000 at the time she filed her 2006 return in April 2007. Respondent also
13 contends that appellant has not provided evidence of financial hardship at the time her 2006 tax liability
14 was due to support a determination of reasonable cause. Respondent states that it is willing to review
15 any financial information that would show that appellant was unable to pay her 2006 tax liability by the
16 due date, despite her reasonable efforts to plan for the timely payment of her 2006 tax liability. (Resp.
17 Opening Br., pp. 5-6.)

18 Respondent contends that the IRS imposed a federal late payment penalty for 2006, and
19 appellant's 2006 IMF indicates that the IRS fully abated the penalty for good filing history, rather than
20 for reasonable cause. Respondent states that, despite its request, appellant has not provided any
21 information showing that the IRS abated the federal late payment penalty for 2006 for reasonable
22 cause. (Resp. Opening Br., p. 6, exhibit K, page 5, item circled; Resp. Reply Br., pp. 3-4.)

23 Underpayment of Estimated Tax Penalties

24 Respondent contends that neither IRC section 6654 nor R&TC section 19136 allows for
25 the abatement of the underpayment of estimated tax penalty upon a showing of reasonable cause.
26 Respondent also contends that appellant has not established that one of the limited exceptions set forth
27 in IRC section 6654(e)(3) applies. As for the disability exception set forth in IRC section 6654(e)(3),
28 respondent states that, although Mr. Gruber had an existing medical condition requiring medical care in

1 2006, there is no evidence showing that Mr. Gruber or appellant became disabled in 2005 or 2004 for
2 purposes of the 2005 tax year. Respondent asserts that the disability exception for purposes of the 2006
3 tax year could only pertain to appellant because she filed a 2006 return using a single filing status, and
4 she has not produced evidence showing that she became disabled in 2005 or 2006. Respondent asserts
5 that it will consider any additional information that appellant submits concerning the issue of whether
6 the disability exception set forth in IRC section 6654(e)(3) applies. (Resp. Opening Br., p. 6; Resp.
7 Reply Br., pp. 2-3.)

8 Interest Abatement

9 Respondent contends that appellant alleges no ground for the abatement of interest other
10 than financial hardship. Respondent states, “Under Revenue and Taxation Code section 19112, unpaid
11 interest may be abated on a final balance due upon a showing of extreme financial hardship caused by
12 significant disability or other catastrophic circumstances.” Respondent contends that no interest may
13 be abated in this appeal under R&TC section 19112 because the interest has been paid. Respondent
14 asserts, however, that related interest would be abated or refunded in the event that appellant is able to
15 show that the late payment of tax penalty should be abated. (Resp. Opening Br., pp. 6-7, fn. 7; Resp.
16 Reply Br., p. 4.)

17 Collection Cost Recovery and Lien Fees

18 Respondent argues that there is no provision in the Revenue and Taxation Code that
19 authorizes the abatement of the collection cost recovery fees or the lien fees once these fees are
20 properly imposed. Respondent asserts that it issued several collection notices after appellant did not
21 pay the 2005 and 2006 tax liabilities when these liabilities became due and payable. Respondent also
22 asserts that it properly secured liens and charged appellant lien fees for 2005 and 2006, and it later
23 released the liens after the 2005 and 2006 balances due were fully satisfied. (Resp. Opening Br.,
24 pp. 7-8, exhibits D, G.)

25 Applicable Law

26 Late Filing and Late Payment Penalties

27 R&TC section 19131 imposes a penalty on any taxpayer failing to make and file a return
28 on or before the due date of the return. The late filing penalty is calculated at 5 percent of the tax due,

1 for each month the return is late (determined without regard to any extension of time for filing), not to
2 exceed 25 percent of the tax required to be shown on the return. (The minimum required penalty is the
3 lesser of \$100 or 100 percent of the tax required to be shown on the return.) R&TC section 19132
4 imposes a penalty on any taxpayer failing to pay the amount of tax shown on a return on or before the
5 due date for payment of the tax. The late payment penalty is calculated at 5 percent of the tax due, after
6 allowing for timely payments, for every month the payment is late, not to exceed 25 percent of the total
7 unpaid tax.

8 To abate these penalties, a taxpayer must show that her failure to file or pay was due to
9 reasonable cause and not due to willful neglect. (Rev. & Tax. Code, §§ 19131, subd. (a); 19132.) The
10 burden is on an appellant to prove that reasonable cause prevented her from filing a return or paying her
11 tax liability by the due date. (*Appeal of Howard G. and Mary Tons*, 79-SBE-027, Jan. 9, 1979.) On
12 appeal, there is a presumption of correctness of a penalty assessed by respondent. (*Appeal of*
13 *Robert Scott*, 83-SBE-094, Apr. 5, 1983.) To overcome the presumption of correctness afforded
14 respondent's penalty determinations, an appellant must provide credible and competent evidence to
15 support the claim of reasonable cause; otherwise, the penalties will not be abated. (*Appeal of*
16 *Michael E. Myers*, 2001-SBE-01, May 31, 2001.) To establish reasonable cause, a taxpayer must
17 demonstrate that she exercised ordinary business care and prudence, or that cause existed as would
18 prompt an ordinary intelligent businessperson to have so acted under similar circumstances. (*Id.* See
19 also *Appeal of Stephen C. Bieneman*, 82-SBE-148, July 26, 1982.) The taxpayer has the burden to
20 prove that difficulties experienced prevented her from complying with her tax obligations. (*Appeal of*
21 *Kerry and Cheryl James*, 83-SBE-009, Jan. 3, 1983.) Being too busy while attending to other business
22 matters does not constitute reasonable cause. (*Appeal of Loew's San Francisco Hotel Corp.*,
23 73-SBE-050, Sept. 17, 1973.)

24 Significant medical or personal problems might constitute reasonable cause for failing to
25 comply under some circumstances; however, the taxpayer must demonstrate a relationship between the
26 events and the failure to comply. (*Appeal of Michael J. and Diane M. Halaburka*, 85-SBE-025, Apr. 9,
27 1985.) Specifically, an appellant must provide evidence that his or her difficulties prevented him or her
28 from timely meeting his or her tax obligations. (*Appeal of Allen L. and Jacqueline M. Seaman*,

1 75-SBE-080, Dec. 16, 1975.) If those difficulties merely made competing demands on an appellant's
2 time, such that the appellant could have timely met his or her tax obligations but chose not to, then the
3 appellant has not shown reasonable cause. In the *Appeal of Allen L. and Jacqueline M. Seaman, supra*,
4 the Board held that the couple could have filed a timely joint return, even if the husband had been
5 unable to sign the return due to his hospitalization with an illness. In the *Appeal of Kerry and*
6 *Cheryl James, supra*, the Board found that the taxpayer offered no evidence to establish that her heart
7 problem prevented her from complying with the FTB's requests for information. Similarly, in the
8 *Appeal of Michael J. and Diane M. Halaburka, supra*, the Board found no evidence that the couple
9 continuously was prevented from filing a timely return due to their son's severe illness and the great
10 stress they consequently incurred. Moreover, in the *Appeal of W.L. Bryant*, 83-SBE-180, decided on
11 August 17, 1983, the Board held that the taxpayer's lengthy and bitter divorce proceedings, including
12 his wife's refusal to sign a joint return, was not reasonable cause for his failure to file a timely return.

13 In addition, the abatement of the late payment penalty for reasonable cause may be
14 based upon a financial inability to pay, as explained in federal Treasury Regulation section
15 301.6651-1(c)(1):⁸

16 . . . A failure to pay will be considered due to reasonable cause to the extent that the
17 taxpayer has made a satisfactory showing that he exercised ordinary business care and
18 prudence in providing for the payment of his tax liability and was nevertheless either
19 unable to pay the tax or would suffer an undue hardship . . . if he paid on the due date. . . .
20 A taxpayer will be considered to have exercised ordinary business care and prudence if
21 he made reasonable efforts to conserve sufficient assets in marketable form to satisfy his
22 tax liability and nevertheless was unable to pay all or a portion of the tax when it became
23 due.

24 To determine the evidentiary grounds for a finding of reasonable cause due to a financial inability to
25 pay, Treasury Regulation section 301.6651-1(c)(1) provides:

26 [C]onsideration will be given to all the facts and circumstances of the taxpayer's financial
27 situation, including the amount and nature of the taxpayer's expenditures in light of the
28 income (or other amounts) he could, at the time of such expenditures, reasonably expect
to receive prior to the date prescribed for the payment of the tax.

⁸ R&TC section 19132 is patterned after IRC section 6651. As such, 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 Board* (1969) 275 Cal.App.2d 653, 658; *Rihn v. Franchise Tax Board* (1955) 131 Cal.App.2d 356, 360.)

1 Thus, a taxpayer will be considered to have exercised ordinary business care and prudence if she made
2 reasonable efforts to conserve sufficient assets in a marketable form to satisfy a tax liability and
3 nevertheless was unable to pay all or a portion of the tax when it became due. (Treas. Reg. § 301.6651-
4 1(c)(1).)

5 Underpayment of Estimated Tax Penalty

6 R&TC section 19136 incorporates by reference, with certain modifications, IRC
7 section 6654, which imposes a penalty for the underpayment of estimated tax if a taxpayer fails to make
8 estimated tax payments in a timely manner. The amount charged is similar to an interest charge and
9 applies from the date the estimated tax payment was due until the date it is paid.

10 Neither R&TC section 19136 nor IRC section 6654 provides for a general reasonable
11 cause exception or a “lack of willful neglect” for the underpayment of estimated tax penalty. (*Appeal*
12 *of George S. and Jean D. McEwen*, 85-SBE-091, Aug. 20, 1985; *Appeal of J. Ray Risser*, 84-SBE-044,
13 Feb. 28, 1984.) Rather, IRC section 6654(e)(3) provides for a waiver of the penalty based on specified
14 circumstances as follows:

- 15 • the IRS determines that, by reason of casualty, death or other unusual circumstances, the
16 imposition of the penalty would be “against equity and good conscience;” (Int. Rev. Code,
17 § 6654(e)(3)(A)); or
- 18 • the taxpayer retired after attaining the age of 62 or became disabled, in the taxable year for
19 which the estimated tax payments were required to be made, or in the preceding taxable year,
20 and the underpayment was due to “reasonable cause and not to willful neglect.” (Int.Rev. Code,
21 § 6654(e)(3)(B).)

22 In relation to IRC section 6654(e)(3)(A), the Internal Revenue Manual (IRM)⁹ states,
23 “The penalty for underpayment of estimated tax cannot be removed or waived for reasonable cause
24 alone.” (IRM, § 20.1.3.1.6.1.1 (December 10, 2013).) The IRM also states:

25 The waiver provisions of IRC section 6654(e)(3)(A) are not equivalent to
26 reasonable cause. For example, reliance on the advice of a competent tax advisor
27 may constitute reasonable cause that would warrant relief from other penalties,
but it does not provide a basis for a waiver of the estimated tax penalty under

28 ⁹ Although the IRM merely represents the IRS’s policy, rather than binding law, these provisions provide useful guidance.
(Pertinent provisions of the IRM can be located at http://www.irs.gov/irm/part20/irm_20-001-001r.html et seq.)

1 IRC section 6654(e)(3)(A).
2 (IRM, § 20.1.3.2.2.1.2 (Dec. 10, 2013).)

3 As relevant to this appeal, the IRM provides the following example of a situation where a waiver may
4 be granted if it is determined that the imposition of the penalty would be against equity and good
5 conscience: “The taxpayer becomes seriously ill or is seriously injured and is unable to manage his
6 affairs.” (IRM, § 20.1.3.2.2.1.2.4 (Dec. 10, 2013).)

7 For purposes of IRC section 6654(e)(3)(B), the term disabled refers to a physical or
8 mental illness or incapacity that renders the taxpayer unable to continue normal business affairs during
9 the time period when the estimated payment becomes due. (*Thomas v. Commissioner*, T.C. Memo
10 2005-258 (no disability when taxpayer is employed and running his own business, despite both mental
11 and physical afflictions); *Meyer v. Commissioner*, T.C. Memo 2003-12 [taxpayer rendered disabled due
12 to diagnosis of AIDS plus nervous breakdown requiring leave of absence from job].)

13 In relation to IRC section 6654(e)(3)(B), the IRM states,

14 **Death, Serious Illness, or Unavoidable Absence**

- 15 1. Death, serious illness, or unavoidable absence of the taxpayer, or a death or serious illness in the
16 taxpayer’s immediate family, may establish reasonable cause for filing, paying, or depositing late
17 for the following:

- 18 A. **Individual:** If there was a death, serious illness, or unavoidable absence of the taxpayer
19 or a death or serious illness in the taxpayer’s immediate family (i.e., spouse, sibling,
20 parents, grandparents, children).

21 ***

22 (IRM, § 20. 1.1.3.2.2.1 (Nov. 25, 2011).)

23 Interest Abatement

24 If a taxpayer fails to pay tax by the due date, or if respondent assesses additional tax, the
25 law imposes interest on the balance due. (Rev. & Tax. Code, § 19101.) The imposition of interest is
26 mandatory. (*Appeal of Amy M. Yamachi*, 77-SBE-095, June 28, 1977.) Interest is not a penalty but is
27 simply compensation for a taxpayer’s use of money after the due date of the tax. (*Appeal of*
28 *Audrey C. Jaegle*, 76-SBE-070, June 22, 1976.) Interest is also mandatory with respect to the
imposition of a failure to file penalty or a failure to pay penalty pursuant to R&TC sections 19131 or

1 19132, respectively. (Rev. & Tax. Code, § 19101, subd. (c)(2)(B).) There is no reasonable cause
2 exception to the imposition of interest. (*Id.*)

3 To obtain interest abatement, an appellant must qualify under one of the following three
4 statutes: R&TC sections 19104, 19112, or 21012. R&TC section 19104 is not applicable here because
5 there is no deficiency in either tax year at issue. Similarly, R&TC section 21012 is not applicable here
6 because there has been no reliance on any written advice requested of respondent. R&TC section
7 19112 requires a showing of extreme financial hardship caused by a significant disability or other
8 catastrophic circumstance. R&TC section 19112 provides that interest “may” be waived for any period
9 for which the FTB determines that an individual “demonstrates [an] inability to pay that interest solely
10 because of extreme financial hardship caused by significant disability or other catastrophic
11 circumstance.” Unlike R&TC section 19104, which provides for the Board’s review of the FTB’s
12 determination, R&TC section 19112 does not give the Board jurisdiction to consider whether the FTB
13 abused its discretion by failing to abate interest under the authority provided by R&TC section 19112.

14 Collection Cost Recovery and Lien Fees

15 R&TC section 19254, subdivision (a), provides that, if a taxpayer fails to pay a liability
16 for taxes, penalties, interest, or other liability, a collection cost recovery fee shall be imposed if
17 respondent has mailed a notice for payment which advises that the continued failure to pay the amount
18 due may result in a collection action, including the imposition of a collection cost recovery fee. There
19 is no reasonable cause exception or any other provision in the statute allowing for relief from the
20 imposition of the collection cost recovery fee. (*Appeal of Michael E. Myers, supra.*)

21 R&TC section 19221, subdivision (a), provides that, if a taxpayer fails to pay the
22 amount of a liability at the time that it becomes due and payable, that liability which includes taxes,
23 penalties, interest, and any costs shall be a perfected and enforceable state tax lien. There is no
24 reasonable cause exception or any other provision in the statute allowing for relief from the imposition
25 of the lien fee. Government Code section 71741, subdivision (d), allows respondent to collect the
26 various fees associated with recording and releasing the state tax lien.

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28 ///

1 STAFF COMMENTS

2 Late Filing and Late Payment Penalties

3 The parties should be prepared to discuss whether reasonable cause for relief from the
4 late filing penalty for 2005 exists due to the circumstances appellant experienced on and prior to
5 April 15, 2006, when appellant's and her deceased husband's 2005 return was due, and whether
6 reasonable cause for relief from the late payment penalty for 2006 exists due to the circumstances
7 appellant experienced on and prior to April 15, 2007, when her 2006 tax liability payment was due. If
8 appellant contends that she is entitled to the abatement of the late payment penalty for 2006 due to a
9 financial inability to pay, she should present to the Board and respondent at least 14 days prior to the
10 hearing documentary evidence which shows that she was financially unable to pay her 2006 tax liability
11 in a timely manner or that she would have suffered undue hardship if she timely paid her 2006 tax
12 liability.¹⁰ (See Treas. Regs. § 301.6651-1(c)(1).)

13 There is no dispute that the IRS fully abated the federal late filing penalty for 2005, as
14 reflected in the couple's 2005 federal account transcript. Appellant argues that the IRS abated the 2005
15 federal late filing penalty and the 2006 federal late payment penalty due to hardship because the IRS's
16 February 18, 2013 letter states that the IRS decreased appellant's 2006 federal failure-to-pay penalty
17 based on the information she provided the IRS concerning Mr. Gruber's medical condition.
18 Respondent contends that there is no information yet available showing why the IRS abated the 2005
19 federal late filing penalty. Respondent should be prepared to discuss whether it received a copy of
20 appellant's 2005 IMF from the IRS and, if so, whether it indicates the reason for the IRS's abatement of
21 the couple's 2005 late filing penalty. According to respondent, appellant's 2006 IMF indicates that the
22 2006 federal late payment penalty was fully abated for her good filing history, rather than reasonable
23 cause. Appellant should produce any documents, other than the February 18, 2013 letter from the IRS,
24 which would indicate that the IRS abated either or both penalties due to hardship. Staff notes, however,
25 that the Board has a duty to apply R&TC sections 19131 and 19132 as these statutes are written
26

27
28 ¹⁰ Exhibits should be submitted to: Khaaliq Abd'Allah, Board Proceedings Division, Board of Equalization, P. O. Box
942879, MIC: 80, Sacramento, CA 94279-0081.

1 regardless of “whether the IRS, or any other entity, has been misinformed or is in error.” (*Appeal of*
2 *Michael E. Myers, supra.* See also *Appeal of Der Weinerschnitzel International, Inc.*, 79 SBE 063,
3 April 10, 1979 (the Board is not bound to follow IRS decisions that it determines to be erroneous.))

4 Underpayment of Estimated Tax Penalties

5 The parties should also be prepared to discuss whether any of the exceptions to the
6 imposition of the underpayment of estimated tax penalty apply. (See Int.Rev. Code, § 6654(e)(3).) In
7 the absence of any such exception, it appears that the imposition of the penalty should be sustained.
8 Appellant contends that the underpayment of estimated tax penalties should be waived under IRC
9 section 6654(e)(3)(B) because she was disabled during the relevant time periods due to depression,
10 which rendered her unable to regularly engage in her real estate business. At the oral hearing, appellant
11 should be prepared to discuss how her purported disability prevented her from meeting her tax
12 obligations for 2005 and 2006, and provide supporting documentation, such as medical reports
13 reflecting her depression for the relevant time periods. The parties may also wish to discuss whether a
14 waiver would be appropriate under IRC section 6654(e)(3)(A) due to Mr. Gruber’s serious illness.
15 (IRM, § 20.1.3.2.2.1.2.4 (December 10, 2013).) Unlike IRC section 6654(e)(3)(B), IRC section
16 6654(e)(3)(A) has no requirement as to when the “unusual circumstances” must have occurred (such as
17 the current tax year or the preceding tax year).

18 Interest Abatement

19 As discussed above, R&TC section 19112 is the only interest abatement statute that
20 applies. The parties should be prepared to discuss whether the Board has jurisdiction to review
21 respondent’s denial of interest abatement under R&TC section 19112. If so, the parties should be
22 prepared to discuss any legal authorities which support respondent’s argument that paid interest may
23 not be abated under R&TC section 19112. Appellant should consider submitting evidence establishing
24 that she was unable to pay the interest “solely because of extreme financial hardship caused by
25 significant disability or other catastrophic circumstances.” (Rev. & Tax. Code, § 19112.)

26 Collection Cost Recovery and Lien Fees

27 There are no statutory provisions which excuse the imposition of the collection cost
28 recovery fees or the lien fees under any circumstances, including reasonable cause.