

**BEFORE THE TAX APPEAL BOARD
OF THE STATE OF DELAWARE**

QUAN C. NGUYEN and HAO T. NGUYEN,)	
)	
Petitioners,)	
)	
v.)	Docket No. 1783
)	
DIRECTOR OF REVENUE,)	
)	
Respondent.)	

BEFORE: Todd C. Schiltz, Esq., Steven R. Director, Esq., Joan Winters, CPA,
Robert Slavin and M. Lynn Fuller

Quan C. Nguyen and Hao T. Nguyen, *pro se*

Anthony J. Testa, Jr., Esq., Deputy Attorney General, for Respondent

DECISION AND ORDER

Petitioners Quan C. Nguyen and Hao T. Nguyen (collectively, "Petitioners") are Delaware residents who seek an abatement of a \$2,282.40 penalty arising from Petitioners' failure to pay the proper amount of estimated income taxes for 2019. The parties have prepared a Stipulation of Facts and submitted final briefing in support of their positions. This is the Board's final decision in this matter.

For the reasons set forth below, the Board determines that Petitioners have not identified any basis to abate the \$2,282.40 penalty. Judgment is entered against the Petitioners and in favor of the Director of Revenue ("Respondent").

STATUTORY FRAMEWORK

For many individual Delaware taxpayers, their employer deducts and withholds their state income taxes. *See* 30 Del. C. §1151 (every employer paying wages must deduct and withhold the income taxes each employee owes Delaware). Other individual taxpayers (*e.g.*, the self-employed, partners in professional practices) must pay quarterly estimated income taxes to Delaware. With respect to this latter group, 30 Del. C. §1169(a) provides that they:

... shall make a declaration of estimated tax for the taxable year in such form as the Director of Revenue may prescribe, if the estimated tax can reasonably be expected to exceed \$800.

Delaware estimated income taxes must be paid “on or before the dates prescribed by the laws of the United States ... except that [the Director of Revenue] may establish other dates for ... payment of estimated tax.” 30 Del. C. §1170(a). For 2019, the Director of Revenue issued a directive that estimated taxes had to be paid on April 30, 2019, June 15, 2019, September 15, 2019 and January 15, 2020.¹

If an individual taxpayer fails to pay any portion of estimated taxes that are due, “such individual shall be deemed to have made an underpayment of estimated tax, and there shall be added to that tax an amount equal to 1½% percent per month, or fraction thereof, of the amount of such underpayment for the period of the underpayment.” 30 Del. C. §535(b).

¹ See https://revenuefiles.delaware.gov/2019/TY19_200ESi.pdf.

With regard to the abatement of the 1½% percent per month penalty, 30 Del.

C. §538(a) provides:

The Director is authorized to abate the unpaid portion of the assessment of any tax, interest, penalty, additional amount or addition to the tax, or any liability in respect thereof, which is:

- (1) Excessive in amount;
- (2) Assessed after the expiration of the period of limitations properly applicable thereto; or
- (3) Erroneously or illegally assessed.²

STATEMENT OF FACTS

Petitioners were residents of Delaware in 2019 and filed Delaware income tax returns for that year. In 2019, Petitioners (or their agents) made the following estimated income tax payments to Delaware:

April 30, 2019:	\$125
June 15, 2019:	\$125
June 17, 2019:	\$5,000
September 15, 2019:	\$125
September 17, 2019:	\$5,000
January 15, 2020:	\$125

² Petitioners cite 30 Del. C. §534(b)(1) and its “reasonable cause” and absence of “wilful (sic) neglect” language to argue that any penalty can be abated if they meet these standards. The Board disagrees. By its express terms, Section 534(b)(1) imposes additional penalties when a taxpayer fails to pay the amount that is due and owing on a tax return (unless the failure is “due to reasonable cause and not due to wilful (sic) neglect”). This case does not concern the failure to pay taxes shown to be due on a return. It concerns the failure to pay estimated taxes, the penalty arising from such a failure, and when such penalty can be abated.

Petitioners were also entitled to a credit toward their 2019 income taxes due to an overpayment of their 2018 income taxes. After the Petitioners added together their estimated income tax payments and their overpayment credit, they determined that they had underpaid their 2019 estimated taxes. Petitioners computed and paid a self-assessed estimated tax underpayment penalty of \$1,348 for 2019.³

The Division of Revenue reviewed Petitioners' estimated payments and credits and determined that Petitioners owed an additional estimated tax underpayment penalty of \$2,282.40. The Division of Revenue sent Petitioners a notice of assessment regarding this additional penalty. Petitioners appealed the notice of assessment and on August 6, 2021, Respondent issued a Notice of Determination denying that appeal. Petitioners then appealed to the Board.

Before the Board, Petitioners argued that the additional penalty should be abated because (i) Petitioners' primary source of income is from an ear, nose and throat medical practice and the COVID-19 pandemic impacted their ability to calculate and pay proper estimated taxes, and (ii) they have always paid their estimated taxes on time and overpaid taxes at times. Notably, none of the facts on which Petitioners rely in support of abatement are included in the Stipulation of Facts that forms the record before the Board.

³ Petitioners do not seek the return of this self-accessed penalty.

ANALYSIS

Petitioners do not dispute that they underpaid their estimated taxes in 2019. They also do not dispute the Division of Revenue's calculation of the underpayment penalty. The only issue before the Board is whether the Respondent erred by not abating the \$2,282.40 additional penalty arising from Petitioners' underpayment of estimated taxes.

As set forth above, a penalty can be abated if it is excessive in amount, was assessed after the passing of the limitations period or is illegal or erroneous. 30 Del. C. §538(a). Petitioners have not argued that any of these conditions have been satisfied. None have and the penalty is not subject to abatement under Section 538(a).

Even if the Board could consider the outside-the-record facts on which Petitioners rely and even if the Board applied the inapplicable "reasonable cause" language in Section 534 of the Delaware tax code, the Board would reach the same conclusion. Petitioners' contention that the COVID-19 pandemic impacted their ability to calculate their 2019 estimated tax payments is disingenuous given that the pandemic began in March 2020, weeks after January 15, 2020, the date the last of Petitioners' 2019 estimated tax payments was due. As to the contention that Petitioners previously paid their taxes on time, any such practice is not a "reasonable cause" for them to underpay estimated taxes in 2019. Taxpayers are required to pay

their taxes on time and any past compliance by Petitioners does not excuse non-compliance in 2019.

Conclusion

For the foregoing reasons, the Board upholds the Notice of Determination and judgment is entered in favor of Respondent.

Paul C. S. P.

Jean M. Winters

M. Lynn Keller

Robert Slavin

Robert Slavin / w/ permission
JCS

SO ORDERED this 6th day of September, 2022.