

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:

**COLLEEN CAMPBELL PAYNE TRUST,
KATHRYN A. DONAHOO, TRUSTEE**

) OTA Case No. 18042883
)
) Date Issued: January 8, 2019
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OPINION

Representing the Parties:

For Appellant: Kathryn A. Dunahoo, Trustee

For Respondent: Eric A. Yadao, Tax Counsel III

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code section 19324,¹ the Colleen Campbell Payne Trust, Kathryn A. Dunahoo, Trustee, appeals an action by the Franchise Tax Board (FTB or respondent) denying appellant’s claim for refund of \$917.06² for the 2016 taxable year.

Appellant waived its right to an oral hearing; therefore, we decide this matter based on the written record.

ISSUE

Has appellant shown reasonable cause exists to abate the late-payment penalty, plus interest?

FACTUAL FINDINGS

1. Decedent, Colleen Campbell Payne, passed away on June 4, 2016.
2. After the death of Ms. Payne, Kathryn Dunahoo, accepted the role of trustee of Ms.

¹ Unless otherwise indicated, all “section” or “§” references are to sections of the California Revenue and Taxation Code.

² Although appellant’s claim for refund listed an amount of \$917.06, appellant paid \$916.71 on October 9, 2017. Appellant’s claim for refund is limited to the amount paid.

- Payne’s decedent’s trust (the Colleen Campbell Payne Trust), which had been established by a declaration of trust dated December 6, 1991.
3. Appellant filed a fiduciary tax return (Form 541) on August 8, 2017, and paid the tax liability on August 7, 2017.
 4. Respondent issued a notice of Tax Return Change – Revised Balance (Notice), on August 29, 2017. The notice indicates that a penalty of \$776.86 and interest of \$139.85 were imposed for a total amount due of \$916.71.
 5. Appellant protested the penalty and interest on September 13, 2017. Appellant asked respondent to “FORGIVE the failure to file and failure to pay penalties.”³ The basis for the request appears to be that the estate was more complex than the trustee realized at the time she accepted the position of trustee, that the trustee believed taxes would not be owed, and that she “was in over [her] head.”
 6. Respondent denied appellant’s request to waive the penalty in a notice dated September 27, 2017.
 7. Appellant made a payment of \$916.71, on October 9, 2017, for the penalties plus interest.
 8. Appellant submitted a Reasonable Cause – Individual and Fiduciary Claim for Refund on or about December 12, 2017. In the explanation section, the trustee reiterated her claims that the estate was complicated. She asserted that it took time to consolidate decedent’s assets and to separate them between beneficiaries and charities. She asserted that a reasonably prudent person in similar circumstances would have been confused by the situation she faced in her role as a trustee.
 9. Respondent denied appellant’s claim for refund on January 1, 2018.
 10. Appellant timely filed this appeal.

DISCUSSION

The Revenue and Taxation Code imposes a late-payment penalty for a taxpayer’s failure to pay the amount of tax shown on a return by the due date. (§ 19132(a)(1).) The late-payment penalty is the sum of two figures that may not exceed 25 percent of the unpaid tax. (§ 19132(a)(2).) The first addend is five percent of the tax that remained unpaid as of the due

³ Although appellant requested abatement of a failure-to-file penalty, we note that FTB did not impose a failure-to-file penalty. The only penalty at issue in this claim for refund is a late-payment penalty.

date. (§ 19132(a)(2)(A).)⁴ The second addend is .5 percent of the unpaid tax balance per month for each month, or portion of a month, that the tax remains unpaid after the due date, not to exceed 40 months. (§ 19132(a)(2)(B).)⁵ For these purposes, the due date for payment of the tax is determined without regard to any extension of time to file the return. (§ 19001.)

The late-payment penalty under section 19132 will be abated if appellant establishes that the late payment was attributable to reasonable cause and not willful neglect. (§ 19132(a).) The burden to prove the existence of reasonable cause lies with the taxpayer, which must demonstrate that it failed to pay the tax when due despite the exercise of ordinary business care and prudence. (*Appeal of Sleight*, 83-SBE-244, Oct. 26, 1983; *Appeal of Scott*, 82-SBE-249, Oct. 14, 1982.)⁶

Appellant filed its fiduciary income tax return prior to the extended due date for the return. (See Cal. Code Regs., tit. 18, § 18567(a) [granting an automatic 6-month extension to file a fiduciary tax return].) However, the automatic filing extension does not relieve appellant of the obligation to pay a tax liability on time. (*Id.*) Appellant paid the 2016 tax liability four months late on August 7, 2017; therefore, the late-payment penalty was properly calculated and imposed.⁷

Appellant's trustee asserts that reasonable cause existed for the late payment because she: 1) had to locate and consolidate decedent's assets, 2) believed the taxes would be "small, but then discovered there were some tax-sheltered funds that incurred a tax liability, 3) experienced difficulty in sorting out what assets to distribute to beneficiaries and to charity, and 4) found the amount of paperwork to be overwhelming.

Because Ms. Dunahoo accepted the position of trustee, she had a duty to administer the trust. (Prob. Code, § 16000.) A trustee must administer the trust with reasonable care, skill, and caution such as a "prudent person acting in a like capacity would use." (Prob. Code, § 16040.) A trustee must satisfy "a reasonable person and prudent investor standard of care in managing the trust." (*Moeller v. Superior Court* (1997) 16 Cal.4th 1124, 1129.)

⁴ Reflected on respondent's Notice and on its tax return detail as an underpayment penalty.

⁵ Reflected on respondent's Notice and on its tax return detail as a monthly penalty.

⁶ Published decisions of the BOE, designated by "SBE" in the citation, are generally available for viewing on the BOE's website: <<http://www.boe.ca.gov/legal/legalopcont.htm>>.

⁷ Appellant's \$11,098 tax liability multiplied by .05 totals \$554.90. Appellant's \$11,098 tax liability multiplied by .005 for each of 4 months totals \$221.96.


While the trust administration may have been more complex than appellant originally anticipated, “complexity and problems in accumulating the information necessary to complete a return is not reasonable cause for failure to pay the tax that is due.” (*Appeals of Campbell*, 85-SBE-112, Oct. 9, 1985.) While we are sympathetic to appellant’s trustee’s claim that she was overwhelmed, none of the reasons she gave for her failure to pay appellant’s taxes on time constitute reasonable cause to abate the late-payment penalty.

HOLDING

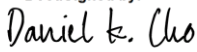
Appellant failed to satisfy its burden of proving that there was reasonable cause to abate the late-payment penalty.


DISPOSITION

Respondent’s denial of appellant’s claim for refund for taxable year 2016 is sustained.

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Teresa A. Stanley
Administrative Law Judge

We concur:

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Daniel K. Cho
Administrative Law Judge

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Tommy Leung
Administrative Law Judge