

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of:	)	OTA Case No. 18042578
<b>MARK M. IWASA AND KATHLEEN H.</b>	)	Date Issued: February 25, 2019
<b>IWASA</b>	)	

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**OPINION**

Representing the Parties:

For Appellants:	Mark and Kathleen Iwasa
For Respondent:	Samantha Quyen Nguyen, Tax Counsel

S. HOSEY, Administrative Law Judge: Pursuant to California Revenue and Taxation Code section 19324,<sup>1</sup> Mark M. and Kathleen H. Iwasa (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$1,101.12 for the 2016 tax year.

Appellants waived their right to an oral hearing and therefore the matter is being decided based on the written record.

**ISSUE**

Have appellants established they are entitled to abatement of the late payment penalty?

**FACTUAL FINDINGS**

1. Appellants timely filed, under extension, their 2016 California Resident Income Return on October 7, 2017, reporting a tax due of \$13,764.
2. Appellants made a payment of \$13,764 on October 7, 2017, when they filed their return.
3. After processing appellants’ return, FTB issued a Notice of Tax Return Change – Revised Balance dated October 30, 2017, imposing the late payment penalty and applicable interest.

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<sup>1</sup> Unless otherwise indicated, all statutory references (“section” or “§”) are to the California Revenue and Taxation Code.

4. Appellants paid the balance in full and requested abatement of the late payment penalty, claiming they did not receive their Schedule K-1 information timely and, thus, could not accurately estimate their tax liability and make any required payment by the return due date. Appellants also claimed that this was the first time they were assessed a penalty.
5. FTB denied appellants' claim for refund and appellants filed this timely appeal.

### DISCUSSION

California imposes a late payment penalty for a taxpayer's failure to pay the amount of tax shown on a return before the due date, determined without regard to extension, unless it is established that the late payment was due to reasonable cause and not due to willful neglect. (§ 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 date. (§ 19132(a)(2)(A).) The second addend is 0.5 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).) Appellants do not dispute that they paid almost six months late, or the calculation of the penalty. Instead, appellants claim that they are entitled to abatement of the penalty because their late payment was due to reasonable cause.

The late payment penalty will be abated if a taxpayer shows that the failure to make a timely payment of tax was due to reasonable cause and not due to willful neglect. (§ 19132(a).) Reasonable cause requires a showing that the taxpayer acted as an ordinarily intelligent and prudent businessperson would have acted under similar circumstances. (*Appeal of Curry*, 86-SBE-048, Mar. 4, 1986.)<sup>2</sup> The taxpayer bears the burden of proving that reasonable cause existed. (*Appeal of Sleight*, 83-SBE-244, Oct. 26, 1983.)

Appellants argue that they did not receive Schedule K-1 information timely and, as a result, they were unable to accurately estimate their tax liability and make any needed payment by April 15, 2017. Appellants also state that their long-time accountant and tax preparer passed away in February 2017 before he was able to prepare their 2016 return. Appellants believed that they had more than enough withholding credits to cover their tax liability. Appellants also claimed that this was the first time they were assessed a penalty.

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<sup>2</sup> Precedential decisions of the Board of Equalization, designated by "SBE" in the citation, are available on that board's website at: <[www.boe.ca.gov/legal/legalopcont.htm](http://www.boe.ca.gov/legal/legalopcont.htm)>.

However, appellants' nonreceipt of their Schedule K-1 in time to accurately estimate their tax is not sufficient to constitute reasonable cause. The failure to timely remit the balance due on a tax liability caused by an oversight does not, by itself, constitute reasonable cause. (*Appeal of Risser*, 84-SBE-044, Feb. 28, 1984.) Furthermore, the cause of appellants' underpayment does not appear to be the amounts reported on Schedule K-1s; rather, the pension income reported on Form 1099Rs increased significantly in 2016 (2013 - \$180,447; 2014 - \$184,277; 2015 - \$189,351; 2016 - \$416,627). There is no indication from appellants that this information was not known or not obtained timely.

Furthermore, the death of appellants' long-time tax preparer in early 2017 does not excuse appellants from their obligation to timely pay their tax liability. Difficulty in obtaining information does not constitute reasonable cause for the late payment of tax. (*Estate of Vriniotis v. Commissioner* (1982) 79 T.C. 298, 311; see also *Appeal of Xie*, 2018-OTA-076P, July 23, 2018; *Appeal of Sleight*, *supra*; *Appeal of Avco Financial Services, Inc.*, 79-SBE-084, May 9, 1979.) Furthermore, an extension of time to file a return is not an extension of time to pay the tax, which is required to be paid on or before the original due date of the return. (§ 18567; *Appeal of Scott*, 82-SBE-249, Oct. 14, 1982.) Appellants have not shown how the passing of their tax preparer in February 2017 prevented them from paying their tax on the original due date of the return, April 15, 2017.

Lastly, even if appellants had, heretofore, an unblemished history of timely tax payments, neither the California Legislature nor FTB have adopted a first-time penalty abatement program, so appellants' alleged history of timely filing and paying California taxes cannot be used as a basis for abatement of the late payment penalty at issue here. Instead, appellants must establish that their failure to timely pay their taxes was due to reasonable cause, which they have failed to do.

Based on the foregoing, appellants have not shown reasonable cause to abate the late payment penalty.

#### HOLDING

Appellants have not demonstrated reasonable cause for failing to timely pay their 2016 tax liability, and the late payment penalty was correctly assessed.

DISPOSITION

FTB's action is sustained.

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*Sara A. Hosey*  
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Sara A. Hosey  
Administrative Law Judge

We concur:

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*Kenneth Gast*  
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Kenneth Gast  
Administrative Law Judge

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Andrew J. Kwee  
Administrative Law Judge