OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:	) OTA Case No. 18011276
	)
HARRY J. MOREN	) Date Issued: June 5, 2019
	)
	)
	)

OPINION

Representing the Parties:

For Appellant: Harry J. Moren

For Respondent: Andrew Amara, Tax Counsel

J. JOHNSON, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, appellant Harry J. Moren appeals an action by the respondent Franchise Tax Board (FTB) in denying appellant's claim for refund of a late-payment penalty in the amount of $1,642,[1] plus interest, for the 2015 tax year.[2]

Office of Tax Appeals Administrative Law Judges John O. Johnson, Neil Robinson, and Amanda Vassigh held an oral hearing for this matter in Sacramento, California, on February 26, 2019. At the conclusion of the hearing, the record was closed and this matter was submitted for decision.

ISSUE

Whether appellant has shown reasonable cause for the late payment of a portion of his 2015 tax liability.

[1] The FTB clarified on appeal that the amount of the penalty was overstated by 9 cents in certain documents, and that the actual amount of the penalty is $1,642.

[2] The Notice of Tax Return Change, discussed below, in response to which appellant filed his claim for refund listed an amount due of $1,956.14, comprised of a late-payment penalty of $1,642.09 and interest of $313.05 on both the penalty and the late-paid tax (with an additional $1 of unpaid tax, not at issue here). The parties established prior to the hearing that the sole issue on appeal is the imposition of the late-payment penalty (and interest compounded thereon). Accordingly, the portion of the claim for refund comprised of interest attributable to the late-paid tax is not at issue on appeal.

FACTUAL FINDINGS

1. Appellant had remitted withholding and extension payments totaling approximately $21,815 as of the due date for payment of his 2015 tax liability.
2. On April 14, 2016, appellant received an email and attachment from the accountant for his relative's estate (April 2016 letter).[3] The email stated that the April 2016 letter was a summary of the current accounting status of the estate, and indicated that the information contained therein affected each of the recipients, including appellant, and their individual tax obligations. Although the email references a summary of accounting, the April 2016 letter, detailed below, provides no actionable data, and instead states that determinations and revisions were still to be made. Accordingly, appellant's 2015 tax liability resulting from the estate distributions was still undetermined as of April 2016.
3. The April 2016 letter informed the estate's beneficiaries, including appellant, that the estate had filed fiduciary tax returns for the estate. The letter advised that, "[m]any of the receipts collected" by the estate and subsequently partially distributed to the beneficiaries in 2015 were amounts on which taxes would be due. The letter indicated that the fiduciary determined in December 2015 that it would be more tax efficient to have the beneficiaries personally report the income on their tax returns rather than reporting the income on the estate returns. The letter informed the beneficiaries that they would have a "significant tax burden" for 2015 based on the distributions from the estate, and that additional funds were available from the estate to alleviate the significant tax payments the beneficiaries might be facing. The letter suggested that the beneficiaries seek individual tax counsel assistance to handle their specific tax situations for 2015. Aside from confirming the amount of distributions received (i.e., $225,000 for appellant), the letter did not provide any amounts or calculations. The letter stated that Schedules K-1 would be issued by an anticipated date of June 15, 2016.
4. The same day that the email was sent from the accountant for the estate, April 14, 2016, appellant's co-beneficiary responded by email, including appellant as a party to her response. The email stated that the co-beneficiary was "not really sure what to do with this information [contained in the April 2016 letter]." She stated that herunderstanding

[3] The letter attached to the email was dated April 12, 2016, though it is undisputed that appellant did not receive the letter until it was sent to him as an attachment to the email on April 14, 2016.

from the letter is that she would need to pay the Internal Revenue Service (IRS) the amount owed on any additional taxable income within four days, but she inquired as to how she could do that if she did not know "the additional amount owed or even the additional income." She relayed that her guess, based on the April 2016 letter, was that not all of the $225,000 distribution was taxable, as it was not all in tax-deferred accounts. The email concluded by stating that it was her impression that inheritance income is not taxable.[4]

5. Neither appellant nor his co-beneficiaries received any response or update from the estate's accountant until August 17, 2016, when the accountant sent an email entitled "Moren Estate Tax Memo - Update." The email included as an attachment a letter dated August 16, 2016 (August 2016 letter), that indicated that, concerning the year at issue, the estate had a small amount of tax due as the income received was substantial and exceeded the distributions to the beneficiaries. The letter stated that Schedules K-1 were submitted to the IRS, though the beneficiaries did not receive their Schedules K-1 until approximately one week later. The letter concluded by noting that a number of tax issues regarding the estate remain open, that the accountant anticipates needing to file amendments, and that his belief is that subsequent changes will reduce taxable income as previously reported by the estate and beneficiaries.

6. Appellant received his Schedule K-1 from the estate in late August. The Schedule K-1 reported appellant's distribution as being nearly entirely taxable.

7. In response to the Schedule K-1, appellant called the accountant and left a voicemail, but did not receive a response. Appellant also emailed the accountant on August 21, 2016, specifically asking for "an accounting" for the estate,[5] and asking for an explanation for his reported personal tax liability and why the distributions were treated as taxable income. After receiving no response, appellant followed up with another email on

[4] Appellant made statements under oath at the oral hearing when discussing the receipt of the April 2016 letter that his co-beneficiary and he "called the accountant and left voice messages" but never received responses to those voice messages. Appellant clarified later during the hearing that he personally did not contact the accountant between April and August of 2016, but that he did call once and left a voicemail for the accountant after receipt of the Schedule K-1 in late August of 2016.

[5] Appellant clarified at the hearing that his request for "an accounting" in his email was a request for "the underlying information to make that estimate" of his tax liability, such as the "information that the accountant used to populate those numbers."

August 31, 2016, asking for a reply to his questions. Appellant did not receive a response from the accountant.

8. Appellant filed his 2015 income tax return on or about October 15, 2016. In addition to wage income, appellant included in his taxable income distributions received through the trust in 2015 pursuant to the Schedule K-1. The return listed an unpaid tax amount of $20,525, which was remitted with the return.

9. The FTB accepted appellant's return and issued appellant a Notice of Tax Return Change (Notice) dated November 10, 2016, imposing a late payment penalty of $1,642.[6]

10. By letter dated November 23, 2016, appellant protested the imposition of the penalty, asserting that the late payment was due to an untimely notification of a one-time, unexpected tax liability (i.e., distributions from the estate categorized as taxable) that rendered his previous 2015 tax payments insufficient. Appellant paid the amount reported as due in the Notice with his protest letter, and respondent therefore treated appellant's letter as a claim for refund.

11. The FTB denied appellant's claim for refund, and this timely appeal followed.

12. In 2018, the estate issued a revised Schedule K-1 for the 2015 tax year to appellant which slightly increased reported dividends but overall reduced the total income reported by a relatively small amount.

DISCUSSION

R&TC section 19132 imposes a late payment penalty when a taxpayer fails to pay the amount shown as due on the return by the date prescribed for the payment of the tax. Generally, the date prescribed for the payment of the tax is the due date of the return (without regard to extensions of time for filing). (R&TC, § 19001.) Here, the FTB properly proposed the late payment penalty because the payment due date was April 15, 2016, and appellant did not completely satisfy his 2015 tax liability until October 15, 2016, six months after the due date.

The late payment penalty may be abated if the taxpayer shows that the failure to make a timely payment of tax was due to reasonable cause and was not due to willful neglect. (R&TC, § 19132(a)(1).) To establish reasonable cause for the late payment of tax, a taxpayer must show that the failure to make a timely payment of the proper amount of tax occurred despite the

[6] The Notice also included $313.05 in interest, which is not argued as a separate issue on appeal.

exercise of ordinary business care and prudence. (*Appeal of Curry* (86-SBE-048) 1986 WL 22783.) The taxpayer bears the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Appeal of Scott* (83-SBE-094) 1983 WL 15480.) Asserted lack of documentation or difficulty in calculating a tax liability does not, by itself, constitute reasonable cause for a late payment of tax. (*Appeal of Sleight* (83-SBE-244) 1983 WL 15615.)

Appellant made timely payment of approximately half of his 2015 tax liability by the due date for payment. This payment amount was made through withholdings and estimated payments, and appears to have satisfied the tax liability from his employment and other non-estate income. The late payment of tax is based solely on the distributions from the estate, received during the 2015 tax year, and reclassified as taxable to him after the tax year closed. The question on appeal is whether appellant had reasonable cause for not paying the tax due on the estate distributions until October 15, 2016, six months after the due date for payment. The determination of whether reasonable cause exists for the late payment requires an analysis of appellant's actions leading up to the late payment, the timing of those actions, and whether they reflect ordinary business care and prudence, such as an ordinarily intelligent and prudent businessperson would have performed under similar circumstances.

Appellant was first made aware of the potential tax liability from the distributions on April 14, 2016, the day before the due date for payment.[7] However, the April 2016 letter did not provide appellant with information that would allow him to determine the amount of the distributions he received that would be deemed taxable, as the estate had not yet made that determination itself. The letter merely informed appellant that "many of the receipts collected" by the estate were subject to tax, and that a "significant tax burden" was predicted. The FTB asserts that appellant, at this time, should have made a tax payment sufficient to cover the liability if 100 percent of the distributions was taxable. The FTB stated that, since the distributions were roughly equal in amount to his employment income, appellant should have just doubled his tax payments for the year. While this suggested action would have been the most cautious approach, it does not mean that it is the only reasonable and prudent option. Instead, lacking any documentation, explanation, or other means by which to determine whether

[7] Due to a holiday on Friday, April 15, 2016, the IRS accepted payments as timely if they were made by the following Monday. California conformed to this federal allowance.

the percentage of distributions that would be deemed to be taxable was 10 percent, 100 percent, or anywhere in between, appellant, through his co-beneficiary, promptly asked for clarification and more information from the estate. This action reflects ordinary business care and prudence, and is of the type that would be performed by an ordinarily prudent and intelligent businessperson in the same situation.

The question of whether there is reasonable cause for a late payment does not end once reasonable cause is found to exist at the time of the due date for payment, however. The inquiry continues until actual payment is remitted, for "an acceptable reason for failure to pay taxes will excuse such failure only so long as the reason remains valid." (*Appeal of Triple Crown Baseball LLC* (2019-OTA-25P) 2019 WL 1527036 [quoting *Steven Bros. Foundation, Inc. v. Commissioner* (1962) 39 T.C. 93, 130, affd. in part & revd. in part on other grounds (8th Cir. 1963) 324 F.2d 633].)

As of the due date for payment of his 2015 tax liability, appellant was awaiting clarification from the estate that would enable him to determine whether and how much additional tax he owed beyond the payments already made. Appellant asserts that, as of the due date for payment, appellant did not understand the accountant for the estate's decision to characterize estate income as beneficiary income, and that, as stated in his co-beneficiary's email and reiterated by appellant at the hearing, it was his understanding that inheritance income was not taxable. Appellant indicates that, despite the detailed inquiry promptly sent to the estate in response to the April 2016 letter, the estate did not provide any clarification. The April 2016 letter indicated that a Schedule K-1 would be issued by June 15, 2016, which would provide appellant with the necessary information to determine his tax obligation; however, the next information from the estate would not come until the August 16 letter. It is not clear what steps were taken from mid-April to mid-August 2016 to attempt to elicit further information from the estate, other than waiting for responses to previous requests and the promised Schedule K-1. Appellant stated at the hearing that he did not personally contact the accountant during this time, though he stated that his similarly situated co-beneficiary left voice messages with the accountant for the estate, possibly during this period.

When asked at the hearing why he did not make additional attempts himself to contact the accountant for the estate prior to receiving the August 2016 letter, appellant recounted the efforts that were made to contact the accountant for the estate, beginning in April 2016, and

noting that every effort to make contact resulted in no response from the estate's accountant. Appellant asserted at the hearing that his "experience is that the accountant is unresponsive," and that he "didn't see that reaching out to the accountant, calling the accountant every week or every month would yield anything other than that" (i.e., nonresponse). Appellant also addressed at the hearing why he did not consult a tax professional for assistance, as was suggested in the April 2016 letter. Appellant asserted that he did not hire a tax professional because he knew what the result of that endeavor would be, based on his background as an attorney and lessons he learned from his late father, who was a tax professional. Appellant contended that a tax professional would need documents or other information that appellant did not have to assist with determining what amount to pay. Appellant's position regarding this period is that, prior to receiving his Schedule K-1, all information necessary to make a reasonable estimate of his tax liability was in the possession of a third party's accountant and withheld from him despite attempts to gather such information.

Appellant received his Schedule K-1 from the estate approximately one week after the August 2016 letter. Appellant again promptly responded to the estate's accountant indicating that information was lacking or unclear, and asked for additional information. Appellant left a voice message, emailed, and emailed again ten days later. Appellant ultimately did not receive a response to any of these inquiries. Six weeks after sending this series of inquiries, appellant had prepared and filed his returns based on the only information available to him at that time, and remitted the outstanding tax due.

The Schedule K-1 information received in late August, upon which he ultimately calculated his outstanding tax liability, did not immediately end appellant's reasonable cause for his late payment. Appellant had serious doubts as to the accuracy of the estate's calculations,[8] and his prompt request for clarification of the estate's determinations as well as supporting documents so that he could verify its determination was prudent. After a follow-up inquiry, and a reasonable amount of time waiting for a response, appellant then set about calculating his tax liability based on the information in the Schedule K-1 as his best-available information. The

[8] In addition to the questions presented in appellant's and his co-beneficiary's inquiries to the estate's accountant, appellant provides a revised Schedule K-1 from the estate that was issued to him in 2018. The revised Schedule K-1 is offered by appellant to support his position that the estate's tax determinations were unreliable, and further support his position that a prudent response to the information provided by the estate with regard to his tax obligations was to ask for supporting documentation and clarification.

process of preparing his return, determining his tax liability, and submitting both to the FTB was completed in a matter of weeks, which falls within a reasonable time period given the facts leading up to the payment.[9]

Appellant has shown that he exercised ordinary business care and prudence in attempting to pay his entire tax liability by the due date with the information available to him. Appellant made efforts to acquire the information necessary to determine the tax liability associated with the distributions from the estate, despite the nonresponsive nature of the third-party's accountant that was withholding the necessary information, and has therefore shown that he acted in a manner matching that of an ordinarily intelligent and prudent businessperson given the situation in which he was placed. Accordingly, appellant has shown that he had reasonable cause for the late payment of that portion of his tax liability that was based on the distributions from the estate, and that the late payment was not due to willful neglect.[10]

There is abundant case law on the subject of reasonable cause, mostly defining what does not constitute reasonable cause, and therefore it is wise here to review the applicable law in more detail and ensure that this determination follows prior precedent, and in doing so further clarify the limits of the decision reached herein.

In *Frias v. Commissioner*, the U.S. Tax Court recently stated that "[t]he most important factor in determining reasonable cause and good faith is the extent of the taxpayer's effort to assess his or her proper tax liability." (*Frias v. Commissioner* (2017) T.C. Memo. 2017-139, *16-17.) The court restated the rule that the nonreceipt of an information return, such as a Form 1099-R or W-2, does not excuse a taxpayer from her duty to report her income on her return. However, the court analyzed the specific facts of the appeal, noting that the taxpayer did not know that a loan was taxable to her as a deemed distribution. The taxpayer also made reasonable assumptions in handling her tax affairs and took prompt action as information became available to her. Under these facts, the court found she had reasonable cause and acted in good faith in

[9] For comparison, the U.S. Tax Court has stated that an eight-month delay in filing a return after receiving the necessary information for filing is not indicative of reasonable cause. (*Electric & Neon, Inc. v. Commissioner* (1971) 56 T.C. 1324; *Estate of Vriniotis v. Commissioner* (1982) 79 T.C. 298, 311.)

[10] Willful neglect means a conscious, intentional failure or reckless indifference. (*U.S. v. Boyle* (1985) 469 U.S. 241, 245.) As discussed above, appellant's attempts to obtain the information and documentation necessary to ascertain or even estimate his tax liability met the standard of ordinary business care and prudence. We similarly find that those same actions show that appellant did not commit a conscious, intentional failure, and that he did not act with reckless indifference in attempting to pay his tax liability. The FTB clarified at the hearing that its position was based on a lack of reasonable cause, and not on an assertion of willful neglect.

failing to report the loan as a taxable distribution. Therefore, the court abated the penalty at issue in that case (the substantial understatement penalty of Internal Revenue Code section 6662). Likewise, appellant in this appeal was under the reasonable assumption that distributions he received during the tax year were not taxable, and thereafter took prompt action to meet his newly discovered tax obligation. As the court stated in *Frias*, "[a]lthough this is a close case, under all of the facts and circumstances we conclude that [appellant] had reasonable cause and acted in good faith."

A strong, and often determinative, factor in this area of law is whether or not the taxpayer has access to sufficient information upon which to base a reasonable estimate of their tax liability. (See, e.g., *Electric & Neon, Inc. v. Commissioner* (1971) 56 T.C. 1324, 1343; *Appeal of Scott* (82-SBE-249) 1982 WL 11906.) On this subject, appellant argues that the FTB instructs taxpayers to "pay no more than the correct amount you owe," as one of his reasons for why he did not make an overly cautious estimated payment immediately upon receipt of the April 2016 letter.[11] While it is the duty of the FTB to ensure that taxpayers pay the correct amount of tax each year (see R&TC, § 19032), there are situations in which taxpayers may need to make reasonable estimates based on information available to them at the time payments are due, if possible, and to make supplemental payments or request a refund at a later date once all necessary information is available. (See *Estate of Campbell v. Commissioner*, T.C. Memo. 1991-615; *Mileham v. Commissioner*, T.C. Memo. 2017-168.)[12]

Accordingly, appellant's argument that taxpayers should not estimate a tax liability for fear of overpaying taxes is overreaching, and does not satisfy the reasonable cause standard. However, reasonably estimating a tax liability requires that a minimum level of information is available to the taxpayer, whether from their own records or from information available upon

[11] Appellant cites to an FTB document relating to the Taxpayers' Bill of Rights.

[12] The issue in *Mileham* concerned the filing of a return, not the payment of tax. While the penalties for late filing and late payment are often treated similarly when it comes to the reasonable cause analysis (see *Appeal of Triple Crown Baseball LLC*, *supra*, 2019 WL 1527036), in reality, the filing of a return and remittance of payment are uniquely different actions with different real-world effects, and often have different due dates (e.g., estimated payments required during the tax year, automatic extension to file personal returns, etc.). Accordingly, it is important to keep these differences in mind when applying the law pertaining to one penalty to that of the other penalty. That said, the concept of filing and paying timely based on reasonable estimates, if possible with the information available, and making necessary adjustments at a later date when additional information is obtained, applies to both the filing of returns and payment of taxes. (See, e.g, *Appeal of Sleight*, *supra*, 1983 WL 15615; See, generally, *U.S. v. Boyle*, *supra*, 469 U.S. at p. 251 ["tax returns have fixed filing dates and . . . taxes must be paid when they are due"].)

request, and here, appellant has shown that he did not have and could not have acquired the information necessary to make an estimate of his tax liability in April 2016.

In contrast, in *Appeal of Cerwin-Vega Int'l* (78-SBE-070) 1978 WL 3543, the Board of Equalization (BOE) denied a claim of reasonable cause for the late payment because thetaxpayer had the information, or the ability to collect the information, that was necessary to timely determine its tax obligation. (See also *Appeal of Sleight*, *supra*, 1983 WL 15615; *Appeals of Campbell* (85-SBE-112) 1985 WL 15882; *Appeal of Scott*, *supra*, 1983 WL 15480.) In that decision, the taxpayer asserted that the late filing of its return was due to determinations made at the parent corporation and federal level. In other words, the taxpayer asserted that the information necessary to determine the tax owed was controlled by another party. However, the BOE determined that the taxpayer could have timely determined its tax liability by keeping California-specific accounting books in addition to its federal accounting books.

Here, appellant did not have that ability. Appellant could not have kept his own records of which distributions were taxable, because those records were kept by the estate, an unrelated entity, and the actual determination of which distributions were taxable was completely in the control of the estate and not finalized and released to appellant until late August 2016, despite requests for the information sooner. This appeal is not a situation in which the amount of taxable income can be ascertained through other investigative methods. The entire determination of the percentage of income that is taxable to appellant was in the control of the estate, was not resolved as of the due date for payment,[13] and was based on estate records to which appellant was denied access.

Whether or not a reasonable estimate of taxable income can be made with the information available as of the due date can also depend on the character of the taxable income. For example, in *Electric & Neon, Inc. v. Commissioner*, *supra*, 56 T.C. 1324, the U.S. Tax Court determined that the rental income which allegedly held up the taxpayer's filing of its return was "a relatively insignificant item which the taxpayer should [have been] able to estimate with a

[13] While the April 2016 letter indicated that the estate was reassigning the obligation of the tax liability from the estate to appellant, it appears that the reassignment was not finalized as of that date as the letter stated that additional calculations were necessary to determine the extent to which appellant's received distributions would be considered taxable. Therefore, unlike in *Appeal of Sleight*, *supra*, 1983 WL 15615, where the BOE found that "[a]ll the events which would determine the tax treatment of the disposition" at issue occurred in October of the tax year at issue, the events determining the tax treatment of the disposition at issue here (i.e., reassigning the tax liability to the beneficiaries) was not completed until after the due date for payment.

reasonable degree of accuracy," and therefore did not constitute "reasonable cause for a substantial delay in filing." (*Electric & Neon, Inc.*, *supra*, 56 T.C. at p. 1343; see also *Estate of Vriniotis v. Commissioner*, *supra*, 79 T.C. at p. 311 [records sought had negligible impact on return].) Conversely, in addition to appellant in this appeal not being able to make a reasonable estimate of the tax effect of the distributions, the unknown amount of taxable income at issue in this appeal had the potential to double appellant's tax liability, and therefore was not insignificant. A claim that calculating a reasonably estimated tax liability is difficult with the documents available is not sufficient. (*Appeal of AVCO Financial Services, Inc.* (79-SBE-084) 1979 WL 4125.) However, as discussed above, appellant was not merely faced with difficult calculations, but was instead truly not capable of reasonably estimating his tax liability with the information available to him.

If a taxpayer asserts that he does not have the information necessary to make a reasonably accurate estimate of his tax liability, he must show the efforts made to acquire that information from the source that held it, and that difficulties in obtaining the necessary information led to the delay in payment. The general rule that unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof applies here. (See, generally, *Appeal of Magidow* (82-SBE-274)1982 WL 11930.) Accordingly, an assertion that records were difficult to obtain without any substantiation of efforts made to retrieve those records or otherwise showing that they were unobtainable is not sufficient to show reasonable cause. (See, e.g., *Appeal of Sleight*, *supra*, 1983 WL 15615; *Appeals of Campbell*, *supra*, 1985 WL 15882; *Appeal of Bieneman* (82-SBE-148) 1982 WL 11825; *Appeal of Tons* (79-SBE-027) 1979 WL 4068; *Elick v. Commissioner*, T.C. Memo. 2013-139; *Estate of Vriniotis*, *supra*, 79 T.C. 298.)

As discussed above, appellant has shown that he was unable to calculate a reasonably accurate estimate of his tax liability at the due date of the return, due to the lack of information regarding the taxable percentage of his distributions. Not only was the information not provided to appellant upon request, but the information was not available anywhere as of the due date for payment, as the estate's accountant was still performing adjustments to reassign the tax liability from the estate to the beneficiaries. The determination of what percentage of appellant's distributions from the estate were taxable was based on information held by the estate. Appellant and his co-beneficiary made multiple requests for this information, which were met with silence. Appellant ultimately received the Schedule K-1 providing him with the taxable amount of

income, but never received the underlying documents through which he could confirm his tax liability, despite his requests for those documents. It was only after appellant received the Schedule K-1 and was reasonably certain that the other requested documentation was not going to be provided that he could reasonably estimate his tax obligation, which he did shortly thereafter. Appellant has substantiated that necessary information was unavailable, that he made prudent efforts to acquire that information, and that the delayed response (or lack thereof) by the third party led to the late payment of tax. Accordingly, appellant has shown reasonable cause for his late payment of tax.

Another common contention in penalty abatement cases is a reliance on good filing and payment history, often based on the first-time abatement allowance offered by the IRS. Here, appellant notes that the IRS abated the late payment penalty based on his history of compliance. While California does not have a procedure for abating a late payment penalty based on a history of compliance, a history of timely filing and payment compliance may still be considered as supporting evidence of the credibility and intent of the taxpayer. (See *Appeal of Xie* (2018-OTA-076P) 2018 WL 6377522.) Therefore, while appellant's history of compliance does not, by itself, show reasonable cause, it supports his position that the delay in his payment of tax was caused by a lack of necessary information, despite his prudent efforts to obtain such information, and not due to negligence or willful neglect on his part. In this regard, appellant's position is also supported by the lack of any evidence that suggests that his late payment was due to the sacrificing of timely payment to instead tend to other business needs. (See *Appeal of Triple Crown Baseball LLC*, *supra*, 2019 WL 1527036.) Instead, appellant timely paid taxes on all income unrelated to the estate distributions, and made efforts to gather the information needed to determine his tax liability for the estate distributions.

HOLDING

Appellant has shown reasonable cause for the late payment of tax for the 2015 tax year.

DISPOSITION

The action of the FTB in denying appellant's claim for refund of the late payment penalty in the amount of $1,642, plus applicable interest on that penalty, for the 2015 tax year is reversed, and appellant's claim for refund of such amount is granted.[14]

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John O Johnson
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John O. Johnson
Administrative Law Judge

We concur:

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Neil Robinson
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Neil Robinson
Administrative Law Judge

DocuSigned by:
Amanda Vassigh
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Amanda Vassigh
Administrative Law Judge

[14] To the extent that appellant's claim for refund included interest applicable to the tax liability itself (i.e., interest other than interest accrued on the late payment penalty), that interest is not abated, and respondent's denial of the claim for refund is sustained as to that interest amount.