

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18093791
R. LAIDLAW AND)
G. LAIDLAW)
_____)

OPINION

Representing the Parties:

For Appellants: R. Laidlaw and G. Laidlaw

For Respondent: Greg W. Heninger, Program Specialist II

S. HOSEY, Administrative Law Judge: Pursuant to California Revenue and Taxation Code (R&TC) section 19324, R. Laidlaw and G. Laidlaw (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$3,746.52, plus interest, for the 2017 tax year.¹

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

ISSUE

Whether appellants have established reasonable cause to abate the late payment penalty.

FACTUAL FINDINGS

1. FTB received appellants’ 2017 tax return on May 30, 2018. Appellants rendered payment of \$62,442 with the return, which fully satisfied their self-assessed tax liability.
2. FTB issued a Notice of Tax Return Change, which imposed a late payment penalty of \$3,746.52, plus interest, because the tax liability for 2017 was not fully paid by the original due date, April 15, 2018.

¹ FTB clarified on appeal that the total amount of the late payment penalty (which includes the five percent underpayment portion plus the monthly portion) actually totals \$3,746.52. The interest on the late paid tax totals \$309.80. Appellants listed \$4,490.11 on their claim for refund, but on appeal state that they are not looking for interest abatement.

3. Appellants paid \$4,055.91 to FTB, which fully satisfied the late payment penalty, plus interest.
4. Appellants filed a Reasonable Cause – Individual and Fiduciary Claim for Refund (i.e., their claim for refund) with FTB for the 2017 tax year. In the claim for refund, appellants requested a first-time abatement waiver because they have never been late in paying their tax liabilities. Appellants also contended that the proper computation of their tax liability was extremely confusing because they were not familiar with the tax impact of exercising their stock options and the resulting alternative minimum tax (AMT).
5. FTB denied appellants’ claim for refund for the 2017 tax year, asserting appellants failed to establish reasonable cause. This timely appeal followed.

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, FTB properly imposed the late payment penalty because the payment due date was April 15, 2018, and appellants did not completely satisfy the 2017 tax liability until May 30, 2018, over a month 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 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.) We will address each of appellants’ arguments below.

Appellants argue that their confusion regarding the tax treatment of exercising stock options and the year in which the gains would be reported for income tax purposes caused the late payment of tax for the appeal year. Appellants contend that they mistakenly believed that their tax liability would be paid through wage withholding. Appellants state that they knew interest would be owed on the known tax liability, but that they did not know about the late payment penalty. Appellants also claim that appellant-husband’s employer was in a “blackout

period” from March until May, which prevented them from withdrawing funds related to their stocks in order to pay their tax liability in a timely manner.

Unfortunately, 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.) Furthermore, ignorance or a misunderstanding of the law generally does not excuse a taxpayer’s noncompliance with California tax laws. (*Appeal of Diebold, Inc.* (83-SBE-002) 1983 WL 15389.) The determination of whether reasonable cause exists for the late payment requires an analysis of appellants’ actions leading up to the late payment, the timing of those actions, and whether they reflect ordinary business care and prudence, such as what an ordinarily intelligent and prudent businessperson would have performed under similar circumstances. (*Appeal of Moren*, 2019-OTA-176P.)

Appellants argue that they relied on the advice of their certified public accountant (CPA) regarding the exercise of their stock and the impact, if any, on their AMT liability, and contend that he told them they did not need to pay tax because they filed an extension. However, it is well-settled law that taxpayers’ reliance on a tax preparer or agent to timely file and pay their taxes does not constitute reasonable cause because taxpayers have a personal, non-delegable obligation to file their tax returns by the due date. (*United States v. Boyle* (1985) 469 U.S. 241, 251-252 (*Boyle*)). The courts have applied this bright-line rule—as articulated in *Boyle*, a case involving a late filing penalty—to the late payment penalty, even in circumstances where taxpayers acted prudently in dealing with their agent or employee. (See, e.g., *Kimdun Inc. v. United States* (C.D. Cal. 2016) 202 F.Supp.3d 1136, 1144-1146; *Conklin Bros. of Santa Rosa Inc. v. United States* (9th Cir. 1993) 986 F.2d 315.) The court noted reasonable cause may exist if a taxpayer relies on the advice of an accountant or attorney with respect to substantive matters of tax law or whether a return needs to be filed in the first place, if the taxpayer shows: (1) the person relied on by the taxpayer is a tax professional with competency in the subject tax law, and (2) the tax professional’s advice is based on the taxpayer’s full disclosure of the relevant facts and documents. (*Boyle, supra*, at pp. 250-251.)

Appellants provided screen shots of text message excerpts allegedly exchanged with their accountant; however, the meaning and circumstances of these messages are unclear. The messages do not contain advice from the alleged tax professional on when or whether to pay tax obligations or that filing an extension would mean appellants would not have to pay by the due

date of the return. They have not shown they were given advice regarding the exercise of stock options or AMT and the tax consequences arising therefrom. Appellants have not otherwise provided sufficient evidence to show they provided full disclosure of the relevant facts and documents to the alleged tax professional. There is no corroborating evidence of any advice from the alleged tax professional, whether regarding the erroneous advice that appellants did not need to pay their tax obligation on the due date or regarding the amount of tax due from exercising their stock options. Therefore, appellants have not shown reasonable cause based on advice from their CPA.

Undue hardship or inability to pay may constitute reasonable case to the extent that the taxpayer has made a satisfactory showing that he or she exercised ordinary business care and prudence in providing for the payment of their tax liability and was nevertheless either unable to pay the tax or would have suffered undue hardship if payment had been made on the due date. (Treas. Reg. § 301.6651-1(c)(1); *Nasir v. Commissioner*, T.C. Memo. 2011-283.) An “undue hardship” is more than an inconvenience to the taxpayer, it must be a substantial financial loss. (Treas. Reg. § 1.6161-1(b).) In this case, appellants have not provided evidence of financial undue hardship in paying their tax obligations by the due date. Appellants have not shown that the accounts referenced were in fact “inaccessible” or that they did not have other bank accounts available with assets. No bank statements or other financial data has been provided. Appellants concede that they did not know the extent of the tax liability until after the due date and have failed to show any financial undue hardship at the time the tax liability was due.

Finally, we acknowledge that appellants appear to have a history of timely tax payments and note that the Internal Revenue Service (IRS) has a penalty abatement program called First Time Abate, under which the IRS may administratively abate penalties for late payment and late filing. Neither the California Legislature nor FTB have adopted a comparable penalty abatement program, so the IRS penalty abatement and appellants’ 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 and not due to willful neglect, which they have failed to do.

HOLDING

Appellants have not established reasonable cause to abate the late payment penalty.

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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John O. Johnson
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John O. Johnson
Administrative Law Judge

DocuSigned by:
Josh Lambert
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Josh Lambert
Administrative Law Judge

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