

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:

**R. GARCIA AND
D. BLYSKAL**

) OTA Case No. 19075039
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OPINION

Representing the Parties:

For Appellants: Tax Appeals Assistance Program (TAAP)¹

For Respondent: Nancy E. Parker, Tax Counsel IV

A. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, R. Garcia and D. Blyskal (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$1,107.17 for the 2017 tax year.

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

ISSUE²

Whether appellants have established reasonable cause for failing to make a timely payment of tax.

FACTUAL FINDINGS

1. Appellant-Blyskal entered into a contract with Warner Brothers Pictures (Warner Brothers) for the sale of her first screenplay in April 2017. Appellant-Blyskal received her first contract payment of \$215,000 and no taxes were withheld. Her subsequent payments, however, did have withholdings of about 50 percent for various taxes.

¹ Vincent Garrido of TAAP filed appellants’ reply brief and Daniella Ashoori of TAAP filed appellants’ supplemental brief.

² Because appellants have not asserted any arguments for abating interest and the installment agreement fee, these issues will not be addressed separately here, and interest will only be abated if the underlying liabilities upon which interest accrued are abated.

2. On March 19 and 22, 2018, appellants provided paperwork to their accountant to file their 2017 return. On April 12, 2018, appellant-Blyskal contacted the accountant again for the status of their 2018 return, to which the accountant replied that she would be wrapping up within the next few days. On April 14, 2018, the accountant emailed appellant-Blyskal that appellants owed about \$16,500 in California taxes and informed her of the option of an installment agreement if they could not make this payment. Appellant-Blyskal replied that they were unprepared to pay the outstanding tax due and needed an installment agreement to pay their California tax.
3. The 2017 return was timely filed. Appellants self-assessed a tax due of \$16,746 with no payment remitted with the return. FTB accepted the return as filed and imposed a late payment penalty. Thereafter, FTB mailed appellants a Notice of State Income Tax Due, indicating a balance due of \$17,853.17, consisting of the unpaid tax of \$16,746, a late payment penalty of \$993.18, plus accrued interest of \$113.99.
4. FTB received and approved appellants' installment agreement request. Appellants paid the total balance due for the 2017 tax year by March 7, 2019.
5. One month after the final payment, appellants filed a claim for refund. FTB denied the claim.
6. This timely appeal followed.

DISCUSSION

A late payment penalty is imposed when taxpayers fail to pay the amount shown as due on the return on or before the due date of the return. (R&TC, § 19132(a)(1).) The late payment penalty may be abated if the taxpayers establish that the failure to make a timely tax payment was due to reasonable cause and was not due to willful neglect. (*Ibid.*) To establish reasonable cause for the late payment of tax, taxpayers must show that their failure to make a timely payment of the proper amount occurred despite the exercise of ordinary business care and prudence in providing payment of their tax liability but was nevertheless either unable to pay the tax or would suffer an undue hardship. (*Appeal of Friedman*, 2018-OTA-077P; Treas. Reg. § 301.6651-1(c)(1).) Taxpayers bear the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Appeal of Friedman, supra.*) Taxpayers will be considered to have exercised ordinary business care and prudence if they made reasonable efforts to conserve sufficient assets to satisfy their tax liability

and nevertheless was unable to pay or all or a portion of the tax when it became due. (Treas. Reg. § 301.6651-1(c)(1).) Appellants do not dispute that they failed to make a timely tax payment.

Appellants argue that despite their exercise of ordinary business care and prudence, they nevertheless incurred an outstanding tax liability on for the 2017 tax year. Appellants assert that they requested that Warner Brothers make “maximum withholdings” from appellant-Blyskal’s compensation. However, appellant-Blyskal’s first payment did not have any taxes withheld. Even so, appellants believed that because the remaining payments withheld approximately 50 percent in taxes, the withholdings were sufficient to satisfy their 2017 tax liability. It was not until appellants engaged an accountant to prepare their 2017 return that they discovered they owed over \$16,000 in additional tax. Appellants assert that like the taxpayers in *Appeal of Moren*, 2019-OTA-176P (*Moren*), appellants reasonably assumed that their withholdings prepared them for the 2017 tax liability based on the fact that this was the first time appellant-Blyskal sold a screenplay and that they took immediate actions to enter into an installment agreement when they discovered that they could not pay the tax due.

While we are sympathetic to appellants’ situation, ignorance of the law does not excuse noncompliance with statutory requirements. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.) Taxpayers who fail to acquaint themselves with the requirements of California tax law have not exercised ordinary business care and prudence. (*Appeal of Diebold, Inc.* (83-SBE-002) 1983 WL 15389.) A review of the evidence shows that appellant-Blyskal’s first payment from Warner Brothers did not have any withholdings. An ordinarily intelligent and prudent businessperson would have undertaken efforts and conducted research to determine the amount of funds to conserve to pay the tax when come due, and appellants have not presented evidence of such efforts here. Although appellants did engage with an accountant, they did not do so until after the 2017 tax year.

Moreover, unlike *Moren*, there is no question that appellant-Blyskal’s income from Warner Brothers was taxable. This case is therefore distinguishable from *Moren*, where we held that the taxpayer had established reasonable cause when the taxpayer could not make a reasonable estimation of his taxes due to a lack of information based upon the taxpayer’s efforts to acquire that information and the difficulty in obtaining that information caused the delay in payment. (*Appeal of Moren, supra.*) Appellants here had all the information available to them

to determine their tax liability when they realized that no withholdings were taken from their \$215,000 check. Even if Warner Brothers had failed to withhold taxes as appellants claim, appellants nonetheless have a personal and nondelegable duty to make required tax payments. (*Appeal of Boehme* (85-SBE-134) 1979 WL 4224.)

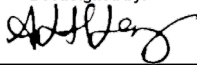
Finally, appellants appear to argue that their accountant acted negligently when the accountant did not inform them of their tax liability until days before the 2017 taxes were due. As we have previously mentioned, appellants have a nondelegable duty to make required tax payments, which includes having funds readily available to pay taxes by the due date of the return. (*Appeal of Boehme, supra.*) There is nothing in the record which suggests that appellants' failure to timely pay the tax was caused by the accountant's advice on a substantive question of law. (See *United States v. Boyle* (1985) 469 U.S. 241, 250-251 [holding that the failure to timely file is not excused by the taxpayers' reliance on a tax professional, unless the taxpayers rely on the advice of a professional with respect to substantive matters of law]; *Appeal of Berolzheimer* (86-SBE-172) 1986 WL 22860 [extending the holding in *U.S. v. Boyle, supra*, to the context of late filing penalties].) We therefore have no basis to abate the late payment penalty.

HOLDING


Appellants have not established reasonable cause for failing to make a timely payment of tax.


DISPOSITION

FTB's action is sustained.

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Andrea L.H. Long
Administrative Law Judge

We concur:

DocuSigned by:

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Sheriene Anne Ridenour
Administrative Law Judge

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Josh Aldrich
Administrative Law Judge

Date Issued: 1/6/2021