

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 20015726
A. DUA AND)
A. DUA)
_____)

OPINION

Representing the Parties:

For Appellants: John Paul Cosico, Tax Appeals Assistance Program (TAAP)¹

For Respondent: Leoangelo C. Cristobal, Tax Counsel

R.TAY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, A. Dua and A. Dua (appellants) appeal an action by Franchise Tax Board (respondent) denying appellants’ claim for refund of \$1,288.08 for the 2018 tax year.

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

ISSUE

Whether appellants have shown reasonable cause existed to excuse appellants’ late payment of tax for the 2018 tax year.

FACTUAL FINDINGS

1. In 2019, appellant-husband A. Dua went out of the country from March 10, 2019, to April 6, 2019, to attend to his father, who had significant health issues. Appellant-wife A. Dua remained in California during this time.

¹ Appellants filed their opening brief. Sapir Hassid of TAAP filed appellants’ reply brief. John Paul Cosico of TAAP filed appellants’ supplemental brief.

2. Appellants timely filed their 2018 California Resident Income Tax Return by the extended due date on October 15, 2019. To complete their 2018 California income tax return, appellants used tax preparation software from H&R Block.
3. On the same day they filed their California income tax return, appellants remitted a \$16,101 tax payment.
4. Respondent assessed the late payment penalty in the amount of \$1,288.08, and interest, and sent appellants a Notice of Tax Return Change – Revised Balance notifying appellants of the assessment.
5. Appellants paid their balance due on November 8, 2019, and two days later, requested a refund of the late payment penalty on the basis that reasonable cause existed. Respondent denied appellants’ claim for refund in a letter dated November 20, 2019.
6. Appellants filed this timely appeal.

DISCUSSION

R&TC section 19001 provides that the personal income tax “shall be paid at the time and place fixed for filing the return (determined without regard to any extension of time for filing the return).” R&TC section 19132 provides that a late payment penalty shall be imposed when a taxpayer fails to pay the amount shown as due on the return on or before the due date of the return. Here, it is undisputed that appellants failed to make a timely tax payment in the amount of \$16,101, and therefore the penalty was properly imposed.

The late payment penalty may 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. (R&TC, § 19132(a).) To establish reasonable cause for a late payment of tax, a taxpayer must show that his or her failure to make a timely payment of the proper amount of tax occurred despite the exercise of ordinary business care and prudence. (*Appeal of Scanlon*, 2018-OTA-75P.) Unsupported assertions are not sufficient to satisfy a taxpayer’s burden of proof. (*Ibid.*) The taxpayer bears the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Appeal of Moren*, 2019-OTA-176P.) Asserted lack of documentation or difficulty in calculating a tax liability does not, by itself, constitute reasonable cause for a late payment of tax. (*Ibid.*)

Appellants argue that reasonable cause existed for three reasons, which we will address in turn.² First, appellants claim the illness of appellant-husband's father prevented them from making a timely tax payment. Illness may establish reasonable cause where the taxpayer presents credible and competent proof that the circumstances of the illness prevented compliance with the law. (*Appeal of Triple Crown Baseball, LLC*, 2019-OTA-025P.) However, if the difficulties simply caused the taxpayer to sacrifice the timeliness of one aspect of the taxpayer's affairs to pursue other aspects, the taxpayer must bear the consequences of that choice. (*Ibid.*)

Here, appellants have not shown that appellant-husband's father's illness prevented compliance with the law. Although appellant-husband was out of the country for an extended period of time, he returned prior to the payment due date. Upon his return, appellant-husband "started collecting and organizing all the many necessary tax documents" and started preparing their tax return. Appellant-husband estimated their final tax balance, wrongly determined that they had made sufficient tax payments to cover his balance, and chose not to submit a tax payment before the April 15, 2019 deadline. Moreover, appellant-wife remained in California during the time of appellant-husband's absence and was not prevented from making a timely tax payment or retaining assistance in making a timely tax payment. Although we acknowledge the difficulty of appellants' circumstances, the record shows appellant-husband's father's illness did not prevent appellants from submitting a timely tax payment.

Appellants' second argument for reasonable cause is that they did not receive "all of their required tax forms" by April 15, 2019. Appellant-husband stated in his declaration that he received additional Schedule K-1s on June 11, 2019 and September 2, 2019, and a corrected Form 1099 on August 24, 2019, but provides no copies of those documents. Difficulty in obtaining information does not constitute reasonable cause for the late filing of a return. (See *Estate of Vriniotis v. Commissioner* (1982) 79 T.C. 298, 311; see also *Appeal of Sleight* (83-SBE-244) 1983 WL 15615.) A taxpayer must establish that he *could not* have acquired the information necessary to make an estimate of his tax liability. (*Appeal of Moren, supra.*) An assertion that records were difficult to obtain without any substantiation of efforts made to

² Appellants also argue that respondent should abate the late payment penalty because the Internal Revenue Service abated the federal late payment penalty for the 2018 tax year based on the federal first-time abatement program. However, there is no similar provision for penalty abatement under California law, and therefore, we do not discuss this argument further.

retrieve those records or otherwise showing that they were unobtainable is not sufficient to show reasonable cause. (*Ibid.*)

Appellants assert that the purported lack of documentation constitutes reasonable cause. However, appellants did not document their efforts to retrieve the missing documents and records that would have helped them accurately estimate their tax due. Rather, appellant-husband stated that he “had to roughly estimate” their final tax balance.³ There is no evidence in the record that appellants tried but failed to obtain the necessary documents, or that they lacked access to the information necessary to make an accurate estimate of their tax. As stated above, to establish reasonable cause, appellants must show that they made efforts to retrieve the necessary documents, but that such documents were unobtainable. (*Appeal of Moren, supra.*) Appellants have made no such showing, and consequently, appellants’ purported lack of documentation does not show reasonable cause existed.

Finally, appellants argue that they relied on tax advice from their H&R Block tax preparation software. Appellants submitted a printout of their tax preparation software’s notification that stated, “You don’t owe a penalty. Since you qualify for an exception, you don’t owe an underpayment penalty for 2018.” However, appellants also provided a printout showing that appellants checked a box in the software stating that they qualified for an exception to the underpayment of estimated tax penalty. Thus, the tax preparation software’s notification was regarding the estimated tax penalty, not the late payment penalty at issue in this appeal.

Although reliance on a tax professional may constitute reasonable cause (see *U.S. v. Boyle* (1985) 469 U.S. 241), we find no such reliance here. Appellants did not provide any evidence of advice regarding the late payment penalty; rather, appellants relied on their tax preparation software’s conclusion about a penalty that is not at issue in this appeal. Errors in using tax preparation software do not constitute reasonable cause to excuse the late payment of tax. (*All Stacked Up Masonry, Inc. v. U.S.* (Fed.Cl. 2020) 150 Fed.Cl. 540, 549.)

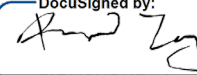
³ It is noteworthy that appellants’ withholding, estimated tax payments and other prepayments totaled less than 50% of the total tax due for tax year 2018. Appellants made no additional tax payments, which shows a lack of effort to *accurately* estimate their final tax balance.

HOLDING

Appellants have not shown reasonable cause existed for appellants’ late payment of tax for the 2018 tax year.


DISPOSITION

Respondent’s action is sustained in full.

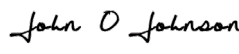
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F8E81582726F448...
Richard Tay
Administrative Law Judge

We concur:

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Josh Lambert
Administrative Law Judge

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John O. Johnson
Administrative Law Judge

Date Issued: 2/1/2021