

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
P. BUCKY

) OTA Case No. 21047547
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OPINION

Representing the Parties:

For Appellant: Jacob Hade, Tax Appeals Assistance Program (TAAP)¹
For Respondent: Alisa Pinarbasi, Tax Counsel

N. DANG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, P. Bucky (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s refund claim of \$3,796.92 for the 2019 tax year.²

We decide the matter based on the written record because appellant waived the right to an oral hearing.

ISSUE

Whether the late-payment penalty and interest should be abated.

FACTUAL FINDINGS

1. In 2001, appellant, a nonresident, inherited an apartment complex (Complex) located in California.
2. The Complex generated California-source rental income.
3. Beginning with the 2010 tax year, appellant retained Arizona Tax Partners (ATP) to prepare and file his California income tax returns.

¹ Appellant filed an opening brief and Charlotte Bray of TAAP filed appellant’s first reply brief.

² The refund amount stated on appellant’s claim is \$2,531.77, which was the outstanding balance due after applying appellant’s October 15, 2020 return payment. However, the interest and penalty in dispute total \$3,796.92.

4. In 2019, appellant sold the Complex, recognizing gain from that sale.
5. The partner at ATP familiar with and responsible for handling appellant's account (i.e., maintaining records and preparing and filing appellant's tax returns) passed away unexpectedly in March 2020. Another partner at ATP eventually took over responsibility for appellant's account in June 2020.
6. On July 14, 2020, appellant spoke with ATP to determine whether a California extension payment would be necessary. Due to time and workload constraints which prevented ATP from thoroughly reviewing appellant's records, ATP initially made the erroneous assumption that appellant's California income tax withholding would be sufficient to satisfy his tax liability. Thus, no California extension payment was made.
7. After the July 15, 2020 payment due date had passed, ATP determined that appellant's withholdings were insufficient and that a subsequent payment to California would be necessary.
8. Appellant thereafter made a late payment for the additional amount due.
9. Consequently, respondent imposed a late-payment penalty and interest.
10. Appellant paid the penalty and interest and filed a refund claim seeking penalty and interest abatement.
11. Respondent denied appellant's refund claim and this timely appeal followed.

DISCUSSION

Issue: Whether the late-payment penalty and interest should be abated.

Appellant argues that the penalty and interest should be abated due to reasonable cause because he relied on ATP for substantive tax advice in computing the tax owed to California for the 2019 tax year. Alternatively, appellant argues that even if he did not receive substantive advice from ATP, his reliance upon ATP to compute the tax due should still be considered reasonable cause. Appellant asserts that ATP did not notify him of the death of the partner responsible for his account until one month prior to the payment deadline. Coupled with the COVID-19 restrictions in place at the time, this "hectic situation" left appellant with no other choice but to rely upon ATP to correctly determine the tax owed.

We first address appellant's interest abatement claim. There is no reasonable cause exception to the imposition of interest. To obtain relief from interest a taxpayer must qualify

under one of the waiver provisions of R&TC sections 19104 (pertaining to unreasonable error or delay by respondent in the performance of a ministerial or managerial act), 19112 (pertaining to extreme financial hardship caused by significant disability or other catastrophic circumstance), or 21012 (pertaining to reasonable reliance on respondent’s written advice). (*Appeal of Moy*, 2019-OTA-057P.) Appellant has not alleged, and the record does not reflect, that any of these waiver provisions are applicable here. Accordingly, we find there is no basis for abating interest.

Regarding the late-payment penalty, it shall not apply if the failure to timely pay is due to reasonable cause and not due to willful neglect. (R&TC, § 19132(a).) Respondent’s imposition of the penalty is presumed to be correct and the taxpayer bears the burden of proving reasonable cause. (*Appeal of Triple Crown Baseball LLC*, 2019-OTA-025P.) Unsupported assertions are insufficient to establish reasonable cause. (*Appeal of Scanlon*, 2018-OTA-075P.)

Reasonable cause may be established where the taxpayer reasonably relies on the substantive tax advice of a tax professional as to whether a tax liability exists and the following conditions are met: (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. (*Appeal of Summit Hosting LLC*, 2021-OTA-216P.) However, a “question of law requiring a tax expert’s opinion does not arise by the mere fact that a ‘tax expert’ completes a taxpayer’s return. If that were the case, any mistake made by a preparer in completing a return would excuse the taxpayer from any liability for the contents of that return.” (*Appeal of Berolzheimer* (86-SBE-172) 1986 WL 22860.) Thus, where a late payment is attributable to a straightforward computation not involving any legal interpretation, taxpayers may not “hide behind an ‘expert’ for the failure to properly determine the tax that was due.” (*Ibid.*)

Appellant did not specify what erroneous legal advice he received, nor does he explain how ATP determined that no extension payment would be necessary. While conceivably, computing the tax due on the sale of real property or rental income might involve areas of potential legal ambiguity, there are many instances where these calculations are relatively straightforward and require only the application of clear and well-established rules. There is no evidence that the former situation is what occurred here. Accordingly, we find appellant has not shown that he received any substantive tax advice from ATP. Moreover, because appellant failed to establish that he received substantive tax advice from ATP, his reliance upon ATP’s

erroneous assumption that no extension payment was necessary, whatever the circumstances may be, does not constitute reasonable cause. (*Appeal of Berolzheimer, supra.*)


Consequently, we find appellant has not established reasonable cause to abate the penalty.

HOLDING

The late-payment penalty and interest should not be abated.


DISPOSITION

Respondent’s action is sustained.

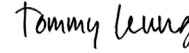
DocuSigned by:


Nguyen Dang
Administrative Law Judge

We concur:

DocuSigned by:


Huy "Mike" Le
Administrative Law Judge

DocuSigned by:


Tommy Leung
Administrative Law Judge

Date Issued: 11/23/2021