

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
H. WALTERS

) OTA Case No. 21017169
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OPINION

Representing the Parties:

For Appellant: Steven D. Blanc

For Respondent: Eric R. Brown, Tax Counsel III

For Office of Tax Appeals: Megan Gregory, Graduate Student Assistant

E. S. EWING, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, H. Walters (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$874.97 for the 2019 tax year.

Appellant waived the right to an oral hearing; therefore, we are deciding this matter based on the written record.

ISSUES

1. Whether appellant has shown reasonable cause to abate the late payment penalty.
2. Whether appellant is entitled to abatement of interest.

FACTUAL FINDINGS

1. On August 14, 2020, appellant timely filed a 2019 California Nonresident or Part-Year Resident Income Tax Return, reporting total tax due of \$13,479.
2. On August 17, 2020, appellant paid the full outstanding amount of tax due.
3. On October 5, 2020, respondent sent appellant a State Income Tax Balance Due Notice, which assessed a late payment penalty of \$808.74 and interest of \$61.31.
4. On October 24, 2020, appellant sent a letter to respondent requesting abatement of the late payment penalty for reasonable cause.

5. On November 25, 2020, respondent sent an Income Tax Due Notice to appellant totaling \$874.27.¹ On December 7, 2020, appellant paid the balance due for the 2019 tax year.
6. On December 10, 2020, respondent received appellant's claim for refund of \$874.97,² and denied the claim on January 7, 2021.
7. This timely appeal followed.

DISCUSSION

Issue 1: Whether appellant has shown reasonable cause to abate the late payment penalty.

The deadline to file California tax returns is April 15th following the close of the tax year for a calendar-year taxpayer. (R&TC, § 18566.) For the 2019 tax year, this deadline was postponed to July 15, 2020.³ Generally, the prescribed filing date for the tax return is the date that payment is due. (R&TC, § 19001.) If a taxpayer fails to pay the amount shown on his or her tax return on or before its prescribed filing deadline, a late payment penalty is imposed on the taxpayer. (R&TC, § 19132(a).) Respondent's imposition of the late payment penalty is presumed correct, and the penalty will not be abated unless the taxpayer can demonstrate that the late payment resulted from reasonable cause and not willful neglect. (R&TC, § 19132(a)(1); *Appeal of Triple Crown Baseball LLC*, 2019-OTA-025P.) The taxpayer bears the burden of showing that both conditions existed. (*Appeal of Friedman*, 2018-OTA-077P.)

The taxpayer must provide credible and competent evidence showing that he or she had reasonable cause for his or her failure to make a timely payment of the tax. (*Appeal of Triple Crown Baseball*, *supra*.) Unsupported assertions are insufficient to satisfy the taxpayer's burden of proof. (*Appeal of Moren*, 2019-OTA-176P.) If a taxpayer fails to introduce evidence that is within his or her control, it is presumed that this evidence is unfavorable to the taxpayer's appeal. (*Appeal of Vardell*, 2020-OTA-190P.)

¹ This amount includes the late payment penalty of \$808.74 and accrued interest of \$65.53 as of the date of this notice. We note that there is nothing in the Income Tax Due Notice that addresses appellant's request to abate the late payment penalty for reasonable cause contained in the letter dated October 24, 2020, and we have nothing in the record to indicate that respondent ever responded to this letter.

² This amount reflects both the late payment penalty of \$808.74 and accrued interest of \$66.23 as of the payment date.

³ Because of the coronavirus pandemic, the deadline to file California tax returns and pay tax due for tax year 2019 was postponed to July 15, 2020, in line with the IRS's postponement of the deadline for federal tax returns for tax year 2019. See *State Postpones Tax Deadlines Until July 15 Due to the COVID-19 Pandemic* (March 18, 2020) Franchise Tax Board News Release (<https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2020-3-state-postpones-tax-deadlines-until-july-15-due-to-the-covid-19-pandemic.html>).

The taxpayer can demonstrate reasonable cause if he or she can show that the late payment occurred despite the exercise of ordinary business care and prudence. (*Appeal of Scanlon*, 2018-OTA-075P.) The taxpayer must show that an ordinarily prudent businessperson in a similar position would have acted as the taxpayer did. (*Appeal of Moren, supra.*) Reasonable cause may exist if the late payment results from the taxpayer’s reliance on erroneous advice about a question of law from an attorney or accountant. (*United States v. Boyle* (1985) 469 U.S. 241, 250 (*Boyle*)). California follows *Boyle* in that a taxpayer’s reliance on a tax adviser must involve reliance on substantive tax advice and not on simple clerical duties. (*Appeal of Mauritzson*, 2021-OTA-198P.) The courts have frequently held that “reasonable cause” is established when a taxpayer show that he reasonably relied on the advice of an accountant or attorney that it was unnecessary to file a return, even when such advice turned out to have been mistaken. (*Boyle, supra* at p. 250.) However, two conditions must be met: (1) the erroneous advice that the taxpayer reasonably relied on was given by a tax professional with competency in California tax law, and (2) this advice was given after the taxpayer had provided all relevant information and documents to the tax professional. (*Appeal of Summit Hosting LLC*, 2021-OTA-216P.)

In this case, appellant does not contest the imposition or calculation of the penalty and instead requests abatement for reasonable cause. Here, appellant asserts that he moved to Puerto Rico and cut all ties with California on March 1, 2018, and hired a Puerto Rico tax professional “to advise and file all required tax reporting documents to Puerto Rico.” In or around January 2018, appellant purchased for investment tokens in a crypto-currency company. During the period September through December 2019, appellant sold various amounts of these tokens, thereby earning capital gains. Appellant asserts that the Puerto Rico tax professional “advised [appellant] that any capital gains [on the sales of crypto-currency] occurring after March 2018 would not be subject to US tax [and presumably California tax] and governed by Puerto Rico law.” Because there were relatively small items to potentially be reported on appellant’s 2019 U.S. and California tax returns, appellant contacted his U.S. accountant, and an estimate was prepared to determine if there was any U.S. (and presumably California) tax due. The U.S. accountant determined in July 2020 that, absent the capital gains from the crypto currency, there was no 2019 U.S. or California tax liability. After contacting his U.S. accountant to prepare his

2019 tax returns, appellant “in an abundance of caution reported the capital gain on his 2019 U.S. and California tax returns.”

While we understand appellant’s assertions, they are unsupported. For example, appellant has not provided evidence to substantiate many of the facts he asserts – e.g., that he moved to Puerto Rico in March 2018, that he cut all ties with California, that the crypto-currency sales occurred after this move, that he sought and obtained advice from a Puerto Rico tax professional, and that this tax professional specifically advised him that the capital gains in question were not taxable in California. Moreover, appellant has provided no evidence to show that the two conditions discussed in *Summit Hosting LLC, supra*, are present in this case. Specifically, there is no evidence that appellant’s tax professional had subject matter expertise related to the capital gains in question and California tax law, or that appellant had provided all relevant information and documents to the tax professional. Because we have no evidence of these underlying details, which are uniquely available to appellant, their absence gives rise to the presumption that they would be harmful to appellant’s argument to abate the late payment penalty. (*Appeal of Vardell, supra*.) Without factual support, appellant’s assertions do not meet the burden of proof to establish reasonable cause to abate the late payment penalty. (*Appeal of Scanlon, supra*.) Put another way, unsupported assertions are not sufficient to meet appellant’s burden of proof. (*Appeal of Moren, supra*.)

Additionally, to the extent appellant is suggesting that he does not in fact have a California tax liability (as it relates to the capital gain in question) for the 2018 tax year, we note that appellant filed a California Nonresident or Part-Year Resident Income Tax Return for the 2019 tax year reporting essentially all of his income as California gross income and self-assessed the tax in question. Appellant’s claim for refund only relates to the late-payment penalty and applicable interest. We have no information before us that appellant has filed an amended return to change this reporting or to seek a refund of this self-assessed tax in addition to the penalty and interest at issue in this appeal.

Issue 2: Whether appellant is entitled to an abatement of the interest.

Under R&TC section 19101(a), interest must be imposed on any amount of tax that remains unpaid after its prescribed payment date has passed. Interest accrues on the amount that remains unpaid, and from the date it becomes past due until the date that the outstanding balance is completely paid. (*Ibid.*) Interest payments are not penalties, but rather compensation for the

taxpayer’s usage of the money when it should have been paid to the state. (*Appeal of Moy*, 2019-OTA-059P.) Imposition of interest is mandatory, and only abated in certain situations. (*Ibid.*) There is no reasonable cause exception to the imposition of interest. (*Ibid.*)


For a taxpayer to be relieved of paying interest, he or she must qualify for one of the waiver conditions of R&TC section 19104, 19112, or 21012. (*Appeal of Balch*, 2018-OTA-159P.) R&TC section 19104 does not apply here because appellant does not assert that the interest is attributable to an unreasonable error or delay by an officer or agent of respondent in performing administrative or ministerial duties. The Office of Tax Appeals does not have jurisdiction to review respondent’s denial of a request to waive interest under R&TC section 19112. (See *Appeal of Moy, supra.*) Finally, relief under R&TC section 21012 is not available to appellant, because appellant’s failure to timely pay was not due to appellant’s reliance on written advice from respondent.

HOLDINGS

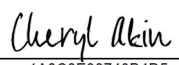
1. Appellant has failed to show reasonable cause to abate the late payment penalty.
2. Appellant is not entitled to abatement of interest.


DISPOSITION

Respondent’s actions are sustained.

DocuSigned by:

 Elliott Scott Ewing
 Administrative Law Judge

We concur:

DocuSigned by:

 Cheryl L. Akin
 Administrative Law Judge

DocuSigned by:

 Andrew Wong
 Administrative Law Judge

Date Issued: 12/15/2021