

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of:  
**R. EAGLE**

) OTA Case No. 19054734  
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**OPINION**

Representing the Parties:

For Appellant: Daniel V. Cunningham, Attorney

For Respondent: Kamalpreet Khaira, Tax Counsel

R. TAY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, R. Eagle (appellant) appeals an action by Franchise Tax Board (respondent) denying appellant’s claim for refund of \$1,705.62 for the 2017 tax year.

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

**ISSUE**<sup>1</sup>

Whether appellant has shown reasonable cause existed to excuse the late payment of tax for the 2017 tax year.

**FACTUAL FINDINGS**

1. Appellant retained a tax professional to help prepare and file her 2017 income tax return. Appellant provided the tax professional the requisite documents to calculate appellant’s tax and prepare her return prior to the payment deadline.
2. Appellant filed a 2017 California income tax return on October 11, 2018, four days before the due date on extension. However, appellant made a late payment of tax for the 2017 tax year on June 7, 2018, which is after the payment deadline of April 15, 2018.

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<sup>1</sup> Appellant requests a refund of interest, but makes no separate argument for interest abatement. We find no grounds for interest abatement in the record, and do not address it further.

3. Respondent imposed the late payment penalty and issued a Notice of Tax Return Change – Revised Balance on October 22, 2018. Appellant paid the balance due in the amount of \$1,619.07 on January 7, 2019.
4. Appellant filed a Reasonable Cause – Individual and Fiduciary Claim for Refund with respondent requesting a refund of the late payment penalty. On February 15, 2019, respondent denied appellant’s claim for refund.
5. 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, respondent properly assessed the late payment penalty because the payment due date was April 15, 2018, and appellant did not satisfy her 2017 tax liability until June 7, 2018, approximately two months after the payment due date.

The late payment penalty may be abated, however, 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)(1).) To establish reasonable cause for a late payment of tax, a taxpayer must show that the failure to make a timely payment occurred despite the exercise of ordinary business care and prudence. (*Appeal of Scanlon*, 2018-OTA-075P.) 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.)

Appellant argues that reasonable cause existed because she did not have access to the requisite information and documents to make a timely payment, and because she relied on her tax professional to “correctly project her tax liability and inform her if she needed to make an estimated tax payment.” We find appellant’s arguments unavailing.

Appellant allegedly did not receive an IRS Form 1065 Schedule K-1 (K-1) until September 2018, which appellant cites as the reason that she was not able to make a timely tax payment. A taxpayer’s lack of necessary documents or difficulty in calculating a tax liability is not, by itself, considered reasonable cause to excuse the late payment of tax. (*Appeal of Moren, supra.*) A taxpayer must also show that he did not have and could not have acquired the necessary information to make an estimate of his tax liability. (*Ibid.*) Here, appellant has not

made such a showing; rather, the facts show appellant had enough information to estimate her tax liability and make a timely payment. Appellant made her tax payment in June *before* obtaining the K-1 in September, so the argument that the K-1 was necessary to estimate her tax liability is contradicted by the facts. Moreover, Appellant’s tax professional concedes appellant provided enough information to estimate her tax liability prior to the payment due date. These facts show appellant had enough information to make a timely tax payment based on a reasonably accurate estimate of her tax liability. Any difficulty acquiring more information did not absolve appellant of her duty to make a timely payment. (*Appeal of Rougeau*, 2021-OTA-335P.) Thus, we do not agree that appellant had reasonable cause based on a lack of necessary information.

We are also not persuaded that appellant’s reliance on her tax professional constituted reasonable cause. Reasonable cause may be established where the taxpayer reasonably relies on the substantive tax advice of a tax professional. (*Appeal of Summit Hosting LLC*, 2021-OTA-216P.) However, reliance on a tax expert is not a substitute for compliance with an unambiguous payment deadline. (See *Boyle v. U.S.* (1985) 469 U.S. 241.) Thus, where a late payment is attributable to a straightforward computation not involving any legal interpretation, the taxpayer may not “hide behind an ‘expert’ for the failure to properly determine the tax that was due.” (*Ibid.*)

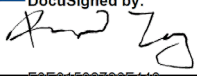
Here, appellant’s representative admits that he “had enough information by April 15, 2018[,] to see that a payment was reasonably due but failed to realize this and communicate it” to appellant in time to make a timely tax payment. Appellant’s reliance on her tax professional who failed to properly compute the tax and timely communicate the tax liability does not constitute reasonable cause. As stated above, reasonable cause exists when a taxpayer reasonably relies on the *substantive* tax advice of a tax expert. (*Boyle v. U.S.*, *supra*, 469 U.S. 241 at 251.) However, appellant’s representative’s error and failure to communicate do not constitute substantive tax advice. Moreover, appellant cannot hide behind an expert’s straightforward computation of tax that led to the failure to properly determine that tax was due. (*Appeal of Berolzheimer* (86-SBE-172) 1986 WL22860.) We acknowledge the frustration arising out of a good faith reliance on a tax professional who erred; however, such reliance is not a substitute for compliance with an unambiguous payment deadline and does not constitute reasonable cause.

HOLDING


Appellant has not shown that reasonable cause existed to excuse the late payment of tax for the 2017 tax year.


DISPOSITION

Respondent’s action is sustained in full.

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Richard Tay  
Administrative Law Judge

We concur:

DocuSigned by:  
  
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Daniel K. Cho  
Administrative Law Judge

DocuSigned by:  
  
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Andrew Wong  
Administrative Law Judge

Date Issued: 1/26/2022