

2. With their return, appellants included a letter requesting that penalties and interest be waived for reasonable cause related to the pandemic. Appellants wrote that they had been unable to obtain the Schedule K-1 they needed for reporting purposes, and therefore, they were filing their return based on an estimated Schedule K-1.¹ Appellants indicated that they would amend their return if the final figures were materially different.²
3. On September 23, 2020, FTB issued to appellants a State Income Tax Balance Due Notice showing a penalty of \$3,484.32 and interest of \$407.04. Appellants paid the balance on October 5, 2020.
4. On December 8, 2020, FTB received appellants' claim for refund of penalties and interest due to reasonable cause. Appellants' claim is based on their allegation that their taxable income for 2019 was unanticipated and thus, they had been unable to file their 2019 return until they received an estimated K-1 late in August 2020. According to appellants, they had made numerous requests for the K-1, but the corporate trustee had cited delays related to the pandemic. Appellants also asserted that they had a history of timely filing and paying income taxes.
5. FTB denied the claim for refund. In correspondence dated January 21, 2021, FTB stated its position that the information provided by appellants does not constitute reasonable cause for abatement of the late payment penalty. FTB also wrote that there is no reasonable cause exception to allow abatement of interest.
6. This timely appeal to the Office of Tax Appeals (OTA) followed. In their appeal, appellants reiterate their contention that the late payment penalty should be abated due to reasonable cause because they were unable to timely obtain the Schedule K-1 due to circumstances beyond their control.³ Appellants claim that after countless requests for information regarding their 2019 taxable income, they finally were told in July 2020 that

¹ Appellants also sent a letter to the Internal Revenue Service (IRS) requesting that penalties and interest be waived. Appellants' letter to the IRS was nearly identical to the letter they sent to FTB except that in their letter to the IRS, appellants asserted that they qualified for the First Time Abatement Waiver. On October 26, 2020, the IRS removed the penalty for late payment of tax.

² FTB notes that appellants filed an amended return reporting additional tax of \$1,869 on October 15, 2020. As no penalty applied to the additional tax self-assessed on that amended return, it is not included in the record for this appeal.

³ While interest is included in the amount at issue on appeal, appellants do not separately request or argue for the abatement of interest on appeal, or provide evidence supporting the abatement of interest, and therefore it is not addressed as a separate issue herein.

the pass-through income to be reported on the Schedule K-1 would be nominal. When the estimated Schedule K-1 reported unanticipated income of approximately 14.4 percent of appellants' total income, appellants allege that they immediately filed their return and paid tax based on the estimated Schedule K-1, and then immediately filed an amended return and paid additional tax when they received a final Schedule K-1.⁴ Appellants cite to the federal abatement of the same penalty based on their assertion of reasonable cause, and they request conformity here. In addition to their request that consideration be given to their efforts at tax compliance, appellants request that consideration be given to the burden they carried in managing the care and resources for a family member who was ill due to the Covid-19 pandemic.

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 timely pay tax in the amount of \$58,072, 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).) The taxpayer bears the burden of proving the existence of both conditions. (*Appeal of Friedman*, 2018-OTA-077P.)

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, and unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Scanlon*, 2018-OTA-075P.)

Examples of circumstances that have been found not to constitute reasonable cause for purposes of penalty abatement include: a taxpayer's discovery of reportable income after the original due date (*Appeal of Elixir Industries* (83-SBE-248) 1983 WL 15619), a taxpayer's

⁴ Appellants have not provided information regarding when they received the estimated Schedule K-1, but an e-mail provided by appellants shows that the estimated Schedule K-1 was available to them no later than August 19, 2020.

difficulty in obtaining necessary information (*Appeal of Campbell* (85-SBE-112) 1985 WL 15882), and a taxpayer’s difficulty in determining income with exactitude (*Appeal of Sleight*, (83-SBE-244) 1983 WL 15615; *Appeal of Avco Financial Services, Inc.* (79-SBE-084) 1979 WL 4125).

In *Appeal of Moren*, 2019-OTA-176P (*Moren*), the panel found that if a taxpayer asserts that they do not have the information necessary to make an accurate estimate of their tax liability, the taxpayer must show the efforts made to acquire that information from the source that held it. In *Moren*, the panel found that the taxpayer showed that he did not and could not have acquired the information necessary to estimate his tax liability by the time the payment was due. The panel also noted that the taxpayer timely paid approximately half of his tax liability by the payment deadline. As to the late payment penalty applied to the unpaid balance in *Moren*, the panel found that the taxpayer’s failure to pay was due to reasonable cause and not willful neglect because he exercised ordinary business care and prudence by attempting to pay his entire tax liability by the due date with the information available to him.

Here, the facts pertaining to appellants are distinguishable from *Moren*. Appellants allege that they made “countless requests” for the K-1 information, yet they have provided no evidence of such efforts. While appellants provided an e-mail showing that the estimated Schedule K-1 was available to them by August 19, 2021, they have not disclosed the earliest date that the information was available to them. The appellants have not offered an explanation as to why they were unable to timely estimate tax or remit an estimated tax payment with respect to the majority of their income, approximately 85.6 percent. The record shows that appellants made a timely estimated federal tax payment of \$60,000 on January 16, 2020. However, appellants did not make comparable efforts with respect to their state income tax obligations. Thus, appellants failed to demonstrate that they made ordinary and prudent efforts to obtain the information they needed timely and, furthermore, failed to timely pay tax on the taxable income known to them as of the due date for payment. Appellants have also failed to demonstrate that they lacked the information necessary to closely estimate their 2019 tax liability by the deadline

for timely payment.⁵

We acknowledge appellants' additional argument that reasonable cause exists because they were caring for a family member. However, appellants have provided no evidence showing how their duties related to their family member prevented them from timely paying tax. In the absence of any evidence showing that appellants attempted to timely pay their state tax liability for 2019, we conclude that appellants' failure to timely pay the liability was not due to reasonable cause.

Regarding appellants' request that the late payment penalty be abated in conformity with the federal abatement of the same penalty, we note that federal abatement of the penalty is distinguishable as a matter of law. In contrast to the authority granted to the IRS to abate penalties based on a taxpayer's good filing history, California has not enacted legislation or otherwise instituted a means for abating timeliness penalties based solely on a taxpayer's history of timely filing and payment of taxes. Instead, California law provides that the timeliness penalties shall apply unless reasonable cause is shown. (*Appeal of Tao Xie*, 2018-OTA-76P). Since we have found that appellants' failure to timely pay the tax liability was not due to reasonable cause, we would be unable to abate the late payment penalty even if evidence of appellants' good filing history were presented to us.

⁵ In response to the Covid-19 outbreak, the Treasury Department and the Internal Revenue Service extended the filing and payment deadline for 2019 tax returns from April 15, 2020, to July 15, 2020. California follows the federal tax filing deadline pursuant to R&TC section 18572. (See also FTB Notice 2020-02.) Thus, the due date for appellants' 2019 California tax return and payment of the remaining tax liability was July 15, 2020. Appellants requested an extension of time to file their return, but an extension of time to file a return is not an extension of time to pay the tax that is required to be paid on or before the original due date of the return. (R&TC, § 18567(b).)

HOLDING

Appellants have not shown reasonable cause for the late payment of tax.

DISPOSITION

Sustain FTB’s action in denying the claim for refund.

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Josh Aldrich
Administrative Law Judge

We concur:

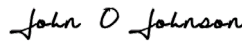
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John O. Johnson
Administrative Law Judge

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