

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
C. ROLLINS

) OTA Case No. 21088465
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OPINION

Representing the Parties:

For Appellant: Adam Brewer, Attorney

For Respondent: Christopher M. Cook, Tax Counsel

J. LAMBERT, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, C. Rollins (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$8,638.56 for the 2015 tax year.

Appellant waived the right to an oral hearing. Therefore, the Office of Tax Appeals decides this appeal based on the written record.

ISSUE

Whether the late payment penalty should be abated.

FACTUAL FINDINGS

1. Appellant timely filed her 2015 California income tax return on March 18, 2016, reporting a total tax of \$34,731 and tax payments of \$142 from withholdings. Payment for the tax due of \$34,589 was not received with the return, so FTB sent a Notice of Income Tax Due to appellant on May 23, 2016, which also included a late payment penalty.
2. Appellant entered into an installment agreement with FTB and began making a series of \$100.00 payments beginning in December 2019. Appellant satisfied her total

obligation with final payments of \$50,461.14 on February 11, 2021, and \$100.05 on February 25, 2021.

3. Appellant filed a claim for refund for the late payment penalty of \$8,638.56, plus interest, which FTB denied.
4. 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, the FTB properly imposed the late payment penalty because the payment due date for 2015 was April 15, 2016, and appellant did not satisfy her tax liability until February 25, 2021.

The late payment penalty may be abated if the taxpayer shows that the failure to make a timely payment of tax was due to reasonable cause and was not due to willful neglect. (R&TC, § 19132(a)(1).) To establish reasonable cause for the late payment of tax, a taxpayer must show that the failure to make a timely payment of the proper amount of tax occurred despite the exercise of ordinary business care and prudence. (*Appeal of Moren*, 2019-OTA-176P.) The taxpayer bears the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Ibid.*)

Appellant asserts that the tax liability resulted from the sale of her rental property. Appellant contends that, prior to or after the sale, she was not advised by her tax preparer that she would owe tax from the sale. A taxpayer's reliance on a tax preparer or agent to timely pay tax does not constitute reasonable cause. (See *Appeal of Berolzheimer* (86-SBE-172) 1986 WL 22860; see also *U.S. v. Boyle* (1985) 469 U.S. 241, 247 & 251 (*Boyle*).) However, reasonable cause may be found when a taxpayer relies on substantive advice from an accountant or attorney on a matter of tax law, such as whether a liability exists. (*Boyle, supra*, 469 U.S. at p. 251.) To establish that reasonable cause exists under *Boyle*, a taxpayer must show that he or she reasonably relied on a tax professional for substantive tax advice as to whether a tax liability exists and that 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 relevant facts and documents. (*Appeal of Summit Hosting LLC*, 2021-OTA-216P.)

Appellant does not provide any evidence of advice provided from her tax preparer that she would not owe tax from the sale of the property. Furthermore, her tax return that is signed by her tax preparer and filed early on March 18, 2016, reported that she would owe the tax that ultimately resulted in the late payment penalty. Therefore, the evidence indicates that appellant and the tax preparer were aware, prior to the due date, that tax would be owed on the sale of the property. Accordingly, appellant has not shown reasonable cause based on reliance on her tax preparer.

Appellant also argues that the funds from the sale were used to make payments for necessary living expenses, and that she will have insufficient income to continue to pay for such expenses in the future. A taxpayer may have reasonable cause for failing to timely pay tax to the extent that the taxpayer has made a satisfactory showing that he or she exercised ordinary business care and prudence in providing for the payment of the tax liability and nevertheless was either unable to pay the tax or would have suffered undue hardship if payment had been made on the due date. (Treas. Reg. § 301.6651-1(c)(1); *Appeal of Rougeau*, 2021-OTA-335P.) An “undue hardship” is more than an inconvenience to the taxpayer, it must be a substantial financial loss. (Treas. Reg. § 1.6161-1(b); *Appeal of Rougeau, supra.*)


Appellant has not shown that she would have suffered undue hardship if she paid her tax obligations by the due date. Appellant asserts that she chose to use the funds to pay for other living expenses, but has not provided any evidence that she was unable to pay the tax or would have suffered undue hardship if payment had been made on the due date. Therefore, appellant has not shown reasonable cause based on undue hardship. Accordingly, appellant has not shown reasonable cause for failing to timely pay the tax due.

HOLDING

The late payment penalty should not be abated.

DISPOSITION

FTB’s action is sustained.

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
Josh Lambert
Administrative Law Judge

We concur:

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Keith T. Long
Administrative Law Judge

Date Issued: 7/26/2022