

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:

D. SULLINS AND
E. SULLINS

) OTA Case No. 220510349
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OPINION

Representing the Parties:

For Appellants:

D. Sullins
E. Sullins

For Respondent:

Eric R. Brown, Tax Counsel III

K. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, D. Sullins and E. Sullins (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$1,013.22 for the 2020 tax year.¹

Appellants elected to have this appeal determined pursuant to the procedures of the Small Case Program. Those procedures require the assignment of a single administrative law judge. (Cal. Code Regs., tit. 18, § 30209.1.) Appellants waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

ISSUE

Whether appellants have established reasonable cause for failing to timely pay their tax liability for 2020.

¹ For their claim for refund, appellants completed a Reasonable Cause – Individual and Fiduciary Claim for Refund form, claiming a refund of penalties in the amount of \$248.81. FTB’s denial in the amount of \$1,013.22, is the total amount of the late payment penalty imposed on appellants for the 2020 tax year. On appeal, appellants assert that they are entitled to a refund in the amount of \$1,234.68, which is the amount of the late payment penalty and the interest that accrued on appellants’ tax liability. Generally, to obtain relief from interest, taxpayers must qualify under one of the following three R&TC sections: 19104, 19112, or 21012. Appellants do not assert that any of these three statutory provisions for interest apply. Accordingly, OTA finds that these statutory provisions are not at issue and will not discuss it further.

FACTUAL FINDINGS

1. Appellants timely filed their 2020 California income tax return, within the extension period on October 15, 2021, reporting tax due of \$12,758. Appellants did not remit payment with the return.
2. On December 13, 2021, FTB issued a Notice of Tax Return Change – Revised Balance (Notice). After applying a May 15, 2021 extension payment of \$1,500 to appellants' \$12,758 tax liability, FTB imposed a late payment penalty of \$956.93, plus accrued interest.
3. On January 5, 2022, appellants made a payment of \$12,492.68, satisfying the liability. On the same day, Appellants also filed a claim for refund of the late filing penalty, asserting reasonable cause for the failure to make a timely payment. Appellants stated that they tried to make a payment when they filed the return on October 15, 2021. Appellants argued that their payment was not debited on that date but that they didn't find out until they received the Notice. FTB denied the claim for refund.
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.)

The late payment penalty may be abated if the taxpayers show 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, taxpayers 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.) Taxpayers bear the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Ibid.*)

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, 249-251 (*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*, taxpayers must show that they 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 taxpayers is a tax professional with competency in the subject tax law; and (2) the tax professional's advice is based on the taxpayers' full disclosure of relevant facts and documents. (*Appeal of Summit Hosting LLC*, 2021-OTA-216P.)

Here, appellants filed their return on October 15, 2021, which is within the extension period. However, payment is due on the due date of the return, without regard to any extensions of time for filing. (R&TC § 19001.) Thus, FTB properly imposed the late payment penalty because the payment due date for the 2020 tax year was May 17, 2021, but appellants did not fully pay their tax liability until January 5, 2022.²

Appellants provide a December 17, 2021 letter from their tax preparer, which shows their tax liability, indicates that payment will be debited from their bank account, and states that their return was e-filed and accepted. Appellants also provide a transmission record showing that their return was filed on October 15, 2021. A review of both documents reveals nothing that shows whether appellants attempted to make a payment of their California tax liability³ on or before the due date of May 17, 2021 (or, as asserted here, October 15, 2021). Instead, the December 17, 2021 letter indicates that a payment *would be* made, not that it *had been* made.

Appellants assert that they did not know whether the payment was withdrawn from their bank account. However, OTA would expect reasonably prudent taxpayers exercising due care and diligence to monitor their bank account and quickly ascertain whether a scheduled electronic payment from their account to respondent was in fact paid. (*Appeal of Scanlon*, 2018-OTA-075P.) Thus, appellants have not shown that reasonable cause exists for their late payment of tax based on these contentions.

Finally, reliance on a tax preparer to make a timely payment does not, on its own, establish reasonable cause. Appellants have a non-delegable duty to timely pay the tax. (*Boyle*,

² For the 2020 tax year, the due date to file returns and make timely payments of tax was extended from April 15, 2021 to May 17, 2021. (See <https://www.ftb.ca.gov/about-ftb/newsroom/2020-tax-year-extension-to-file-and-pay-individual.html>.)

³ Appellants' bank statements show that they made a payment of their federal tax liability to the IRS on October 19, 2021.


supra, at p. 251.) Appellants have not provided any evidence they relied on substantive advice from their tax preparer. Accordingly, appellants have not shown reasonable cause exists for their failure to timely pay the tax. OTA finds no basis to abate the late-payment penalty.

HOLDING

Appellants have not established reasonable cause for failing to timely pay their tax liability for 2020.

DISPOSITION

FTB's denial of appellants' claim for refund is sustained.

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Keith T. Long
Administrative Law Judge

Date Issued: 11/28/2022