



- gain income from the disposition of Pinterest stock.<sup>2</sup> It was the first year that appellants sold this stock from their Charles Schwab account.
2. On May 11, 2021, appellants' tax preparer sent an email to appellants stating that no additional payment was due by the payment due date for their 2020 taxes, and therefore appellants made no payment on May 17, 2021.
  3. The tax preparer later discovered that when computing appellants' California taxes for the 2020 tax year, the tax preparer inadvertently overlooked appellants' Form 1099 issued by Charles Schwab, which reported capital gain income from the disposition of Pinterest stock.
  4. On August 12, 2021, appellants remitted their late payment to FTB after their tax preparer informed them of the miscalculation.
  5. Appellants timely filed their 2020 California Resident Income Tax Return by the extended due date and self-reported a late payment penalty and accrued interest.
  6. On January 27, 2022, appellants filed a claim for refund for the late payment penalty and applicable interest because they assert that they reasonably relied on their tax preparer's advice in the May 11, 2021 email that no payment was due to California by the payment due date.
  7. FTB denied the claim for refund.
  8. This timely appeal followed.

### DISCUSSION

R&TC section 19132 imposes a late payment penalty when taxpayers fail 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.) Appellants do not dispute that their payment was late or that FTB properly calculated the late payment penalty. Thus, since FTB does not assert willful neglect is present in this case, the only issue is whether appellants have demonstrated reasonable cause for their failure to timely pay their required tax.

The late payment penalty may be abated if the taxpayers show that the failure to make a

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<sup>2</sup> Due to COVID-19, FTB postponed the due date for paying taxes for the 2020 tax year from April 15, 2021, to May 17, 2021. (See *2020 Tax Year Extension to File and Pay (Individual)*, February 10, 2022, Franchise Tax Board Newsroom, <https://www.ftb.ca.gov/about-ftb/newsroom/2020-tax-year-extension-to-file-and-pay-individual.html>.)

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.) The taxpayers bear the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Ibid.*)

Appellants contend that they relied on the advice of their tax preparer that they would not need to make any payment by the due date for their 2020 California taxes. Appellants further contend that it is appellants' first year where they sold their Pinterest stock and that the gain from the sale of stock was reported on Form 1099, which was made available to their tax preparer before the postponed payment due date on May 17, 2021.

However, taxpayers' reliance on a tax preparer or agent to timely pay tax does not constitute reasonable cause. (See *U.S. v. Boyle* (1985) 469 U.S. 241, 251 (*Boyle*); see also *Appeal of Summit Hosting LLC*, 2021-OTA-216P.) But reasonable cause may be found when taxpayers rely 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, supra.*) California follows *Boyle* in that taxpayers' reliance on a tax adviser must involve reliance on substantive tax advice and not on simple clerical duties. (*Ibid.*)

As noted above, in order to show that appellants have reasonable cause, they must establish that they reasonably relied on their tax preparer for advice on questions of substantive tax law. (*Appeal of Summit Hosting LLC, supra.*) Here, evidence in the record does not reveal any *substantive tax advice* was given to them by their tax preparer. Instead, evidence in the record only shows that the tax preparer inadvertently overlooked appellants' capital gain income as reported on Form 1099 when calculating whether appellants needed to make a tax payment on May 17, 2021. Appellants' tax preparer provided no substantive tax advice, such as whether the capital gains realized from the sale of stock was taxable by California. Since the tax preparer

made a clerical error, appellants’ reliance on the May 11, 2021 email is not reasonable cause.

HOLDING

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

DISPOSITION

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

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*Eddy Y.H. Lam*  
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Eddy Y.H. Lam  
Administrative Law Judge

We concur:  
DocuSigned by:  
*Asaf Kletter*  
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Asaf Kletter  
Administrative Law Judge

DocuSigned by:  
*Tommy Leung*  
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Tommy Leung  
Administrative Law Judge

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