

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 21068047
M. MANUEL AND)
N. MANUEL)
_____)

OPINION

Representing the Parties:

For Appellants: Anastasia Martyanova, Tax Appeals Assistance Program (TAAP)¹

For Respondent: Topher Tuttle, Tax Counsel III

For Office of Tax Appeals: Nguyen Dang, Tax Counsel III

O. AKOPCHIKYAN, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. Manuel and N. Manuel (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying their claim for refund of \$18,981.30 for the 2019 tax year.

The Office of Tax Appeals (OTA) Administrative Law Judges Sheriene Anne Ridenour, Amanda Vassigh, and Ovsep Akopchikyan held an electronic oral hearing for this matter on March 23, 2023. At the conclusion of the hearing, the record was closed and this matter was submitted for an opinion.

ISSUE

Whether appellants have established a basis to abate the late payment penalty.

FACTUAL FINDINGS

1. Appellants indirectly owned an interest in a Limited Liability Company (LLC), which in turn owned a 33 percent interest in a U.K. partnership.

¹ Appellants filed their opening brief. Haley A. Ritter of TAAP filed appellants’ first reply brief and Aaron Broberg of TAAP filed appellants’ second reply brief.

2. On or about February 23, 2019, the LLC realized a nearly \$9 million gain from the sale of its interest in the U.K. partnership.
3. Appellants filed a timely 2019 joint California income tax return (Return) on October 14, 2020, within the extension period, and reported tax due of \$292,020.
4. Appellants paid the balance due with the filing of the Return on October 14, 2020, which is after the payment due date of July 15, 2020.²
5. Consequently, FTB imposed a late payment penalty and applicable interest, which appellants paid.
6. Appellants filed a refund claim requesting abatement of the penalty and interest on “reasonable cause” grounds.³
7. FTB denied the refund claim and this timely appeal followed.

DISCUSSION

The late payment penalty shall not be imposed if the failure to make a timely payment was due to reasonable cause and not willful neglect. (R&TC, § 19132.) The burden of proving reasonable cause and the absence of willful neglect lies with the taxpayer. (*Appeal of Moren*, 2019-OTA-176P.) To meet this burden, the taxpayer must show that the failure to timely pay occurred despite the exercise of ordinary business care and prudence; that is, that the taxpayer acted as an ordinarily prudent and intelligent businessperson would have under similar circumstances. (*Ibid.*)

Appellants argue that they had reasonable cause for the late payment of their 2019 tax liability because they were, for various reasons, unable to obtain a 2019 Schedule K-1 from the U.K. partnership (Schedule K-1) prior to the payment due date. Appellants contend they could not have reasonably estimated their California tax liability without this information. Appellants also provided documents which they assert establish their various unsuccessful efforts to obtain the Schedule K-1 both prior to and after the payment due date.

It is well established that difficulty determining income with exactitude does not constitute reasonable cause. (*Appeal of Xie*, 2018-OTA-076P.) Taxpayers are generally required

² Due to the COVID-19 pandemic, FTB extended the payment deadline from April 15, 2020, to July 15, 2020, for the 2019 tax year. (<https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2020-3-state-postpones-tax-deadlines-until-july-15-due-to-the-covid-19-pandemic.html>.)

³ Only the penalty is at issue on appeal.

to estimate their tax liability and file their returns with the best available information, and if necessary, file an amended return. (*Ibid.*) Thus, to show reasonable cause based on a lack of information, appellants must demonstrate that (1) they were unable to reasonably estimate their tax liability without the Schedule K-1 and (2) they did not have, and could not have acquired, the Schedule K-1 prior to the payment due date of their 2019 tax liability. (*Appeal of Moren, supra.*)

Appellants offer no explanation or evidence as to why they could not have reasonably estimated their tax liability without the Schedule K-1. Appellants did not provide a copy of the Schedule K-1 on appeal. However, appellant-husband M. Manuel testified at the hearing that most, if not all, of the income related to the U.K. partnership (and reported on the Schedule K-1) stems from one transaction—the sale of their indirect interest in the U.K. partnership. The sale of their interest in the U.K. partnership occurred in approximately February 2019, over one year before the payment due date. The record does not explain why appellants could not have reasonably estimated their tax liability (or any portion thereof) related to that one transaction prior to the payment due date. Although appellants compare their case to *Appeal of Moren, supra*, the facts in that appeal are distinguishable. There, appellant established that he could not have estimated his income by keeping his own records or through other investigative means. By contrast, appellants here have not shown that the Schedule K-1 was necessary to reasonably estimate their 2019 tax liability. Therefore, OTA need not address whether appellants acted with due care in attempting to obtain the Schedule K-1, or appellants' contention that the COVID-19 pandemic delayed the preparation of the Schedule K-1. OTA finds that appellants have not shown reasonable cause for abating the penalty.

Appellants also contend that the late payment penalty should be abated based on their history of timely filing and paying their taxes. However, California law does not automatically abate late payment penalties based on a history of timely compliance. (See *Appeal of Xie, supra.*) Reasonable cause is generally required to abate the late payment penalty. (*Ibid.*) While a history of timely compliance may support a taxpayer's credibility and intent, a history of timely compliance does not, by itself, establish reasonable cause. (*Ibid.*) Moreover, although R&TC section 19132.5 authorizes first-time abatement of a late payment penalty for certain filers, that section applies only to tax years starting on and after January 1, 2022, and thus is not applicable in this case.

Accordingly, OTA finds that appellants have failed to establish any basis to abate the late payment penalty.

HOLDING

Appellants have not established a basis to abate the late payment penalty.

DISPOSITION

FTB’s action is sustained.

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Ovsep Akopchikyan
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Ovsep Akopchikyan
Administrative Law Judge

We concur:

DocuSigned by:
Amanda Vassigh
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Amanda Vassigh
Administrative Law Judge

DocuSigned by:
Sheriene Anne Ridenour
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Sheriene Anne Ridenour
Administrative Law Judge

Date Issued: 5/25/2023