

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
D. WATSON¹

) OTA Case No. 21078212
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OPINION

Representing the Parties:

For Appellant: D. Watson

For Respondent: Phillip C. Klean, Attorney

A. VASSIGH, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, D. Watson (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$9,284.03² for the 2019 tax year.

Appellant waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

ISSUES

1. Whether appellant has established that reasonable cause exists to abate the late payment penalty.
2. Whether appellant has established a basis to abate the underpayment of estimated tax penalty (estimated tax penalty).

FACTUAL FINDINGS

1. Appellant made an extension payment of \$140,021 for the 2019 tax year on July 22, 2020.

¹ Appellant filed a joint return with his spouse for the 2019 tax year. However, appellant’s spouse did not join this appeal.

² This amount consists of a late payment penalty of \$7,609.03, and an underpayment of estimated tax penalty of \$1,675.00.

2. The payment due date for the 2019 tax year was July 15, 2020.³
3. Appellant timely filed his 2019 California income tax return by the automatic extension date on October 15, 2020. Appellant reported total tax of \$141,783, total payments and withholding of \$269,437, and an overpayment of \$127,654 and requested that \$125,979 of this amount be applied to tax year 2020 as an estimate payment.
4. On January 21, 2021, FTB issued appellant a Notice of Tax Return Change - Revised Balance (Notice of Tax Return Change) revising appellant's reported tax payments from \$269,437.00 to \$143,437.00, and imposing a late payment penalty of \$7,609.03, an estimated tax penalty of \$1,675.00, and applicable interest. Because of the changes to appellant's payments and the imposition of penalties and interest, the Notice of Tax Return Change reflected a balance due of \$7,822.86, instead of the overpayment reflected on appellant's 2019 return. Appellant paid the balance on April 14, 2021.
5. On April 12, 2021, FTB received appellant's Reasonable Cause – Individual and Fiduciary Claim for Refund form, in which appellant requested a refund of \$9,523.10 for tax year 2019. FTB denied appellant's claim for refund of the late payment penalty and interest on the basis that the information appellant provided did not constitute reasonable cause for waiving the penalty, and there is no reasonable cause exception for the abatement of interest. In a separate letter, FTB also denied appellant's claim for refund of the estimated tax penalty and interest,⁴ informing appellant of the conditions for a waiver of the estimated tax penalty.
6. This timely appeal followed.
7. During this appeal's proceedings, on September 17, 2021, FTB requested additional documentation from appellant regarding his claim for refund, including documentation pertaining to appellant's contentions that his accounting firm provided him a tax estimate that was \$380,000 less than his actual tax liability; that the one week delay in payment was due to the time it took appellant to obtain a line of credit; and that appellant was only

³ The deadline for filing 2019 California income tax returns and making payments of tax due was postponed to July 15, 2020, due to the COVID-19 pandemic. (See <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>.)

⁴ Appellant provides no argument or evidence regarding the interest in this appeal, and the evidence does not show that he is entitled to abatement of interest under the provisions of R&TC sections 19104 or 21012. (*Appeal of Moy*, 2019-OTA-057P.)

- provided the balance due by the accounting firm one day prior to the deadline. FTB asked appellant to provide the requested documentation by October 29, 2021
8. Appellant did not respond to FTB's request for additional documentation.
 9. FTB sent its request for additional documentation to appellant again on April 11, 2022. Appellant also did not respond to FTB's second request for additional documentation.
 10. In its opening brief for this appeal, dated August 3, 2022, FTB again invited appellant to provide additional documentation in support of his contentions. Appellant has not provided further documentation in response.

DISCUSSION

Issue 1: Whether appellant has established that reasonable cause exists to abate the late payment penalty.

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 has two parts. The first part is 5 percent of the unpaid tax. (R&TC, § 19132(a)(2)(A).) The second part is a penalty of .5 percent per month, or portion of a month, not to exceed 40 months, calculated on the outstanding balance. (R&TC, § 19132(a)(2)(B).) For the 2019 tax year, the payment due date was July 15, 2020, and appellant did not satisfy his tax liability until July 22, 2020.⁵ Therefore, FTB properly imposed a late payment penalty of \$7,609.03 (i.e., $(\$138,346.00^6 \times 0.05) + (\$138,346.00 \times 0.005)$).

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, the taxpayer must show that the failure to make a timely payment occurred despite the exercise of ordinary business care and prudence. (*Appeal of Scanlon*, 2018-OTA-075P.) The taxpayer bears the burden of proving that an ordinarily

⁵ The subsequent payment on April 14, 2021, was the payment of the penalties and interest.

⁶ \$141,783 total tax reported by appellant on the 2019 return minus appellant's timely withholdings of \$3,437.

intelligent and prudent businessperson would have acted similarly under the circumstances. (*Appeal of Belcher*, 2021-OTA-284P.)

Each taxpayer has a non-delegable obligation to file a tax return by the due date. (See *U.S. v. Boyle* (1985) 469 U.S. 241, 247 (*Boyle*)). The courts have applied this bright-line rule—as articulated in *Boyle*, a case involving a late filing penalty—to the late payment penalty, even in circumstances where a taxpayer acted prudently in dealing with their agent or employee. (See, e.g., *Conklin Bros. of Santa Rosa Inc. v. U. S.* (9th Cir. 1993) 986 F.2d 315; *Kimdun Inc., et al. v. U. S.* (C.D. Cal. 2016) 202 F.Supp.3d 1136, 1144-1146.) The United States Supreme Court held that “[t]he failure to make a timely filing of a tax return is not excused by the taxpayer’s reliance on an agent, and such reliance is not ‘reasonable cause’ for a late filing ” (*Boyle*, *supra*, at p. 252.)

However, the Court also observed that reasonable cause may exist if a taxpayer reasonably relies on the advice of an accountant or attorney with respect to substantive matters of tax law or whether a return needs to be filed in the first place, even when such advice turned out to have been mistaken. (*Id.* at pp. 250-251.) While good faith reliance on professional advice may provide a basis for a reasonable cause defense, it is not absolute. (*Repetto v. Commissioner*, T.C. Memo. 2012-168.) To establish that reasonable cause exists under *Boyle*, a taxpayer must show that it 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 citing *Boyle*, *supra*.)

On appeal, appellant asserts that there is reasonable cause to abate the late payment penalty. Appellant contends that a large portion of his 2019 tax liability was related to his exercise of incentive stock options that resulted in “paper gain” only, and that his accountant provided him with a tax estimate amount that was significantly lower than the amount of tax actually due. Appellant explains that staffing issues related to COVID-19 at the accountancy firm caused them to provide him with the actual tax amount due only one day prior to the payment deadline. Appellant asserts that the incorrect tax advice he initially received led to him not having been prepared with sufficient funds available to pay his full tax liability on time, but that within one week he had arranged a line of credit to cover his tax amount.

Office of Tax Appeals (OTA) acknowledges that appellant made his tax payment one week after the July 15, 2020 due date. Other than this fact, the record does not contain any evidence in support of appellant's argument. Despite several opportunities to provide supporting documentation for these contentions, appellant has not provided any evidence in support of his position that he relied on incorrect substantive tax advice. Nor has appellant shown that the tax preparer was competent in incentive stock option transactions or that appellant provided the tax preparer with all of the relevant facts and documents.

Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Bindley*, 2019-OTA-179P.) Without any substantiation for appellant's claim that he relied on incorrect substantive tax advice, OTA must conclude that appellant has not established that reasonable cause exists to abate the late payment penalty.

Issue 2: Whether appellant has established a basis to abate the estimated tax penalty.

R&TC section 19136 incorporates by reference Internal Revenue Code (IRC) section 6654, which imposes an estimated tax penalty upon an individual for failing to timely make estimated income tax payments. The estimated tax penalty may not be abated based solely on a finding of reasonable cause. (*Appeal of Johnson*, 2018-OTA-119P.) IRC section 6654(e)(3) provides limited exceptions to the imposition of the penalty if either of the following conditions are satisfied: (A) "by reason of casualty, disaster, or other unusual circumstances the imposition of [the penalty] would be against equity and good conscience"; or (B) the underpayment was due to reasonable cause and not willful neglect, and the taxpayer retired at the age of 62 or older in the year at issue or the prior year, or, alternatively, the taxpayer became disabled in the tax year for which the estimated tax payments were required to be made or in the preceding tax year.

Appellant contends that the estimated tax penalty should be abated for the same reasons provided for abatement of the late payment penalty, and that those reasons constitute an unusual circumstance. As noted above, the estimated tax penalty may not be abated based solely on a finding of reasonable cause. (*Appeal of Johnson, supra.*) Appellant offered no other argument or evidence to support his failure to make timely estimated tax payments for the 2019 tax year. The burden is on appellant, and he has not demonstrated that he is entitled to the relief provided by IRC section 6654(e)(3). Therefore, appellant has not shown that the estimated tax penalty for the 2019 tax year should be abated.

HOLDINGS

1. Appellant has not established that reasonable cause exists to abate the late payment penalty.
2. Appellant has not established a basis to abate the estimated tax penalty.

DISPOSITION

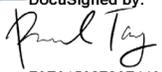
FTB’s action denying appellant’s claim for refund is sustained.

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Amanda Vassigh
 Administrative Law Judge

We concur:

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Richard Tay
 Administrative Law Judge

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Joshua Lambert
 Administrative Law Judge

Date Issued: 9/27/2023