

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
Y. SWABY

) OTA Case No. 220410212
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OPINION

Representing the Parties:

For Appellant: Y. Swaby

For Respondent: Eric R. Brown, Tax Counsel III

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

R. TAY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Y. Swaby (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s refund claim of \$3,028.32 for the 2020 tax year.¹

Appellant waived the right to an oral hearing; therefore, the OTA decides this matter based on the written record.

ISSUE

Whether appellant has shown there was reasonable cause to excuse her late payment of tax for the 2020 tax year.

FACTUAL FINDINGS

1. Appellant timely filed her 2020 California income tax return. However, appellant and appellant’s tax return preparer (Agent) state that, due to an error on the part of Agent, no timely payment was made.

¹ Appellant submitted two claims for refund for the 2020 tax year on August 30, 2021 and November 11, 2021. Respondent issued a letter denying the claim for refund dated August 30, 2021. Appellant’s November 11, 2021 claim for refund is deemed denied because there is no response in the record.

2. Consequently, respondent imposed a late-payment penalty of \$2,746.64.
3. Appellant paid the penalty and, on August 25, 2021, filed a timely refund claim seeking penalty abatement and claiming a refund of \$2,746.64.²
4. Respondent denied appellant's refund claim and 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.) It is undisputed appellant did not submit a timely tax payment for the 2020 tax year. Appellant argues that she reasonably relied on Agent to timely pay her 2020 tax liability, and therefore, she should not be penalized for Agent's failure to do so.

The late-payment penalty shall not apply if the failure to timely pay was due to "reasonable cause" and not willful neglect. (R&TC, § 19132(a).) To establish reasonable cause, the taxpayer must show that the failure to timely file a return occurred despite the exercise of ordinary business care and prudence. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.)

It is well established that taxpayers have a *non-delegable obligation* to ensure that a timely payment was made, and therefore, reliance upon an agent in this regard does not constitute reasonable cause. (*Baccei v. U.S.* (9th Cir. 2011) 632 F.3d 1140, 1148-1149.)³ The exercise of ordinary business care and prudence required appellant to personally monitor her bank account to quickly ascertain whether a payment was in fact made and to take the appropriate corrective actions. (*Appeal of Scanlon*, 2018-OTA-075P.) Instead, appellant chose to rely entirely upon Agent. The law dictates that appellant must bear the consequences of that choice, and in this situation, such reliance resulted in negative consequences. Appellant has not established reasonable cause for the late payment, nor any other grounds for abatement.

² On November 11, 2021, Agent filed a claim for refund on appellant's behalf for a refund amount of \$3,028, which includes interest. Although appellant includes this amount in appellant's opening brief, appellant does not make a separate argument for interest abatement, and OTA also finds no basis in the record to abate interest. Thus, respondent's imposition of interest is no longer at issue, and will not be discussed further.

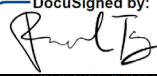
³ Because the relevant language of R&TC section 19132 pertaining to the reasonable cause exception is patterned after Internal Revenue Code section 6651, the federal courts' interpretation of this language is persuasive authority in determining the proper construction of the California statute. (*Andrews v. Franchise Tax Bd.* (1969) 275 Cal.App.2d 653, 658.)

HOLDING

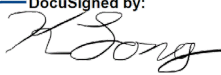
Appellant has not shown there was reasonable cause for the late payment of tax for the 2020 tax year.

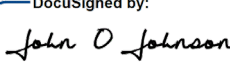
DISPOSITION

We sustain respondent’s action.

DocuSigned by:

F8E81582726F448...
Richard Tay
Administrative Law Judge

We concur:

DocuSigned by:

DC88A60D8C3E442...
Keith T. Long
Administrative Law Judge

DocuSigned by:

873D9797B9E64E1...
John O. Johnson
Administrative Law Judge

Date Issued: 8/25/2023