

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
F. BOOTHE

) OTA Case No. 230112255
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OPINION

Representing the Parties:

For Appellant: Archie J. Kuehn, CPA

For Respondent: David Muradyan, Attorney

K. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, F. Boothe (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$4,660.98 for the 2021 tax year.

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

ISSUE

Whether there is reasonable cause for appellant’s late payment of tax for the 2021 tax year.

FACTUAL FINDINGS

1. On May 16, 2022, appellant filed a timely 2021 California income tax return, within the extension period. Appellant reported a tax due of \$77,683 and self-imposed a penalty for the underpayment of estimated tax, which appellant paid with the return.
2. On June 8, 2022, FTB issued a State Income Tax Balance Due Notice, imposing a late payment penalty of \$4,660.98 plus applicable interest. On September 4, 2022, appellant made a payment satisfying the liability.

3. Appellant filed a Reasonable Cause – Individual and Fiduciary Claim for Refund on September 25, 2022, requesting a refund of the late payment penalty.
4. On December 29, 2022, FTB denied the claim for refund stating that appellant failed to show reasonable cause.
5. 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 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 for the late payment of tax, a taxpayer 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 taxpayer bears 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 US. 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*, a taxpayer 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 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 the relevant facts and documents. (*Appeal of Summit Hosting LLC*, 2021-OTA-216P.) California follows *Boyle* in that a taxpayer's reliance on a tax adviser must involve reliance on substantive tax advice and not on simple clerical duties. (*Appeal of Mauritzson*, 2021-OTA-198P.)

Here, appellant filed her return on May 16, 2022, 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 because the payment due date for the 2021 tax year was April 15, 2022.

On appeal, appellant does not dispute that she made a late payment of tax. However, appellant contends that reasonable cause exists for the late payment. Appellant asserts that her tax preparer made a clerical error by marking the return as filed in the tax preparer's software, when the return was not in fact filed. Appellant contends that she timely signed an authorization form and relied on her tax preparer to make the filing and process the payment. Appellant contends that she was made aware of the failure to pay the tax liability upon receiving a bank statement for the month of April. At that time, appellant states that she immediately filed the return and paid the tax liability.¹

As discussed above, reliance on a tax professional to make a timely payment of tax does not constitute reasonable cause. Appellant had a non-delegable duty to pay the tax. (*Boyle, supra*, at p. 251.) The fact that appellant relied on her tax preparer to file her return does not relieve her of the responsibility to ensure that it is timely filed. Appellant does not assert, and OTA finds nothing in the record to show, that she relied on substantive advice from her tax preparer. Instead, the record indicates that appellant failure to pay the tax resulted from the tax preparer's clerical error. Accordingly, appellant has not shown reasonable cause exists for failure to timely pay the tax. OTA finds no basis to abate the late payment penalty.

¹ Appellant also requests relief of the penalty based on an application of R&TC section 19132.5. R&TC section 19132.5 allows a taxpayer to request a one-time abatement of a timeliness penalty under certain conditions. (R&TC, § 19132.5(a), (b).) However, this one-time abatement only applies to taxable years beginning on or after January 1, 2022. (R&TC, § 19132.5(f).) Here, respondent imposed a late payment penalty for the 2021 tax year. As such, the provisions of R&TC section 19132.5 do not apply.

HOLDING

Appellant has not established reasonable cause for the late payment of tax for the 2021 tax year.

DISPOSITION

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

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Keith T. Long
Administrative Law Judge

We concur:

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Eddy Y.H. Lam
Administrative Law Judge

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Andrew Wong
Administrative Law Judge

Date Issued: 9/11/2023