

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 221212022
G. PATZLAFF AND)
S. PATZLAFF)
_____)

OPINION

Representing the Parties:

For Appellants: Alexander J. Johnson, Representative

For Respondent: Natasha S. Page, Attorney

For Office of Tax Appeals: Angie Ye, Graduate Student Assistant

S. HOSEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, G. Patzlaff and S. Patzlaff (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$3,796.56 for the 2021 tax year.

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

ISSUE

Whether appellants have shown reasonable cause to abate the late payment penalty imposed under R&TC section 19132 for the 2021 tax year.

FACTUAL FINDINGS

1. On April 13, 2022, appellants timely filed their 2021 joint California Resident Income Tax Return reporting total tax due was \$63,276. After self-assessing an underpayment of estimated tax penalty of \$1,147, appellants reported a total amount due of \$64,423.
2. FTB did not receive appellants’ payment for the reported tax due until May 16, 2022, after the due date for payment; consequently, FTB issued appellants a State Income Tax Balance Due Notice on June 14, 2022, imposing a late payment penalty plus interest.

3. On June 24, 2022, FTB received a payment of \$3,464.16 from appellants.
4. On July 22, 2022, FTB received a Reasonable Cause – Individual and Fiduciary Claim for Refund where appellants argued that they had reasonable cause for the late payment of tax due to an entry error by their tax preparer. Appellants further asserted that they manually made the payment once they noticed that the payment was not debited from their account.
5. On November 3, 2022, FTB issued a Claim for Refund Denied letter denying appellants' claim for refund because the information they provided in the claim did not constitute reasonable cause for abatement of the late payment penalty.

DISCUSSION

Generally, the date prescribed for the payment of tax is the due date of the return (without regard to extensions of time for filing). (R&TC, § 19001.) 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 by the payment of the tax. Here, appellants' payment of tax due date was the original filing deadline of April 15, 2022. Because appellants did not satisfy their 2021 tax liability until May 16, 2022, FTB properly imposed the late payment penalty.

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 timely pay occurred despite the exercise of ordinary business care and prudence. (*Appeal of Moren*, 2019-OTA-176P.) Additionally, reliance on a tax professional's advice for questions of substantive tax law may constitute reasonable cause, where certain conditions are met, including where the tax professional has competency in the subject tax law and the tax professional's advice is based on the taxpayer's full disclosure of the relevant facts and documents. (*United States v. Boyle*, (1985) 469 U.S. 241, 250; see also *Appeal of Summit Hosting LLC*, 2021-OTA-216P.) California follows *Boyle* in that taxpayer's reliance on a tax advisor must involve reliance on substantive tax advice and not on simple clerical duties. (*Appeal of Mauritzon*, 2021-OTA-198P.)

Here, appellants contend that they had reasonable cause for the late payment of tax, due to an entry error by their tax preparer. However, appellants' tax preparer's entry error is a clerical error; therefore, appellants' failure to timely pay the tax was not caused by the tax

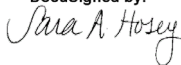
preparer's advice on substantive questions of law. Further, taxpayers are expected to monitor their bank accounts to determine whether payment has been successfully made. (*Appeal of Friedman*, 2018-OTA-077P.) Appellants have not shown that they properly monitored their bank account in the two months after the payment was due. Appellants also argue that they qualify for a first-time abatement. However, R&TC section 19132.5, which authorizes first-time abatement of state income taxes for certain individual filers, is statutorily limited to tax years starting on and after January 1, 2022. Here, the tax year at issue is the 2021 tax year. Appellants have not established that their untimely payment of tax for 2021 tax year was due to reasonable cause and not due to willful neglect such that the late payment penalty may be abated.

HOLDING

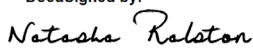
Appellants have not shown reasonable cause to abate the late payment penalty under R&TC section 19132 for the 2021 tax year.


DISPOSITION

FTB's action in denying appellants' claim for refund is sustained.

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Sara A. Hosey
Administrative Law Judge

We concur:

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Natasha Ralston
Administrative Law Judge

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John O. Johnson
Administrative Law Judge

Date Issued: 10/3/2023