

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 230513290
 M. MINUTILLO AND)
 A. CAROLLA)
 _____)

OPINION

Representing the Parties:

For Appellants: M. Minutillo
 A. Carolla

For Respondent: Blake Cunningham, Specialist

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. Minutillo and A. Carolla (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants' claim for refund of \$2,354.42 for the 2021 taxable year.

Appellants elected to have this appeal determined pursuant to the procedures of the Small Case Program. Those procedures require the assignment of a single administrative law judge. (Cal. Code Regs., tit. 18, § 30209.1.) Appellants waived the right to an oral hearing; therefore, the Office of Tax Appeals decides the matter based on the written record.

ISSUE¹

Have appellants established reasonable cause to abate the late-payment penalty?

FACTUAL FINDINGS

1. Appellants filed a timely joint California Resident Income Tax Return (Return) for the 2021 taxable year within the extension period.
2. On September 23, 2022, appellants paid the tax due shown on their Return.

¹ FTB denied appellants' claim for refund of \$2,013.63 plus applicable interest. Appellants make no specific arguments regarding interest abatement; and this Opinion does not discuss interest further.

3. FTB issued a Notice of Tax Return Change – Revised Balance imposing a late-payment penalty of \$2,013.68 plus interest of \$340.74.
4. Appellants paid the balance due on November 30, 2022, and filed a claim for refund.
5. FTB denied appellants’ claim for refund, 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 tax. 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.) The late-payment penalty may be abated where a 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).) To establish reasonable cause for the late payment of the 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.*)

Appellants assert that they have reasonable cause for the late payment because they received poor advice (or no advice) from their tax preparer regarding the need to send their tax payment by the original due date even though they filed their taxes during the extension period after the original due date. More specifically, appellants contend that their tax preparer filed an extension without their permission and did not advise them to pay a balance “ASAP,” and did not advise them that penalties would be imposed if the payment was late. In support, appellants provide emails between themselves and their tax preparer.

It is well settled that a taxpayer’s failure to make a timely payment or timely file a return is not excused by a taxpayer’s reliance on a tax preparer because a taxpayer has a personal, non-delegable obligation to meet statutory deadlines. (See *U.S. v. Boyle* (1985) 469 U. S. 241, 247 & 252 (*Boyle*); see also *Appeal of Rougeau*, 2021-OTA-335P [applying *Boyle*, a case involving the late-filing penalty, to the late-payment penalty]. It requires no special training or effort to ascertain a deadline and make sure it is met. (*Appeal of Rougeau, supra*, citing *Boyle*.)

To establish that reasonable cause exists, 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 relevant facts and documents. (*Appeal of Summit Hosting LLC*, 2021-OTA-216P.)

Appellants have not established that advice on when to pay constitutes substantive advice. Here, appellants actually state that their tax preparer failed to give them advice. Paying taxes is a clerical act that generally falls on the same due date each year, and it takes no special training or expertise to ascertain the due date for appellants' 2021 tax payment. (*Appeal of Rougeau*, 2021-OTA-335.) Additionally, ignorance of the law is not reasonable cause for failure to comply with statutory requirements. (*Appeal of Porreca*, 2018-OTA-095P.) Appellants could have inquired as to the applicable payment due date when an extension of the filing due date is filed. Appellants note their good history of timely complying with their tax obligations, which shows that appellants were aware of those tax obligations. As such, a reasonably prudent person would have known 2021 taxes were due on April 15, 2022. Appellants do not present any evidence that they took the initiative to ascertain their tax payment deadline and to pay on time. Accordingly, appellants did not exercise ordinary business care and prudence.

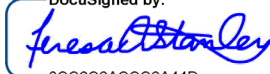
Finally, as noted above, appellants assert that they have a good history of meeting their tax obligations, and that this was the first time they filed an extension and paid tax late. In support, appellants provide a letter from the IRS abating the federal late-payment penalty based on a good filing and payment history. However, for the 2021 taxable year, there is no California legal authority that allows for abatement of the late-filing penalty based solely on good filing and payment history. (See *Appeal of Xie*, 2018-OTA-076P; but see R&TC, § 19132.5 [for taxable years beginning on or after January 1, 2022, an individual taxpayer shall receive, under certain conditions, a one-time abatement of the late-filing penalty].)

HOLDING

Appellants have not established reasonable cause to abate the late-payment penalty.

DISPOSITION

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

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Teresa A. Stanley
Administrative Law Judge

Date Issued: 10/25/2023