

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 220811045  
**R. CALLENDER AND** )  
**M. CALLENDER** )  
\_\_\_\_\_ )

**OPINION**

Representing the Parties:

For Appellants: David Goh, Attorney

For Respondent: Alisa L. Pinarbasi, Attorney

K. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, R. Callender and M. Callender (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$30,940.04 for the 2020 tax year.<sup>1</sup>

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 for the late payment of their 2020 tax liability.

**FACTUAL FINDINGS**

- Appellants filed a timely joint 2020 California resident income tax return within the automatic filing extension, on October 6, 2021. After applying withholding credits of \$119,569 and estimated tax payments of \$369,136, and self-assessing an estimated tax penalty of \$725, appellants claimed a refund of \$36,997.

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<sup>1</sup> There is a conflict between the amount recorded on appellants’ claim for refund dated November 6, 2021, which claims a refund of \$30,940.04, and FTB’s May 6, 2022 Notice of Action denying the claim for refund in the amount of \$31,159.62. In its opening brief, FTB states that it agreed to abate \$219.58 of the late payment penalty, thereby reducing the claim denial to \$30,940.04.

2. FTB reviewed appellants' account and found that appellants' estimated payments totaled \$19,136.<sup>2</sup> Based on this information, on October 18, 2021, FTB issued a Notice of Tax Return Change informing appellants of an additional tax liability of \$312,278. FTB also imposed a late payment penalty of \$24,982.24, an estimated tax penalty of \$1,976, and applicable interest.
3. Appellants made payments of \$343,218.04 on October 26, 2021, and \$219.58 on December 18, 2021, satisfying the liability.
4. On November 4, 2021, appellants filed a claim for refund of the late payment penalty, the estimated tax penalty, and the applicable interest based on reasonable cause.<sup>3</sup>
5. On May 6, 2022, FTB issued a Notice of Action denying appellants' claim for refund.
6. This timely appeal followed.

### DISCUSSION

#### Whether appellants have shown reasonable cause for the late payment of their 2020 tax liability.

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 Quality Tax & Financial Services, Inc.* 2018-OTA-130P; see also *U.S. v. Boyle* (1985) 469 US. 241, 249-251 (*Boyle*).) However, reasonable cause may be

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<sup>2</sup> Appellants' total estimated tax payments of \$19,136 include the following payments: \$5,741 on July 15, 2020; \$7,654 on September 15, 2020; and \$5,741 on January 15, 2021.

<sup>3</sup> By letter dated July 17, 2023, appellants conceded to the estimated tax penalty and the imposition of interest. As such, those items will not be discussed.

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, appellants filed their return on October 6, 2021, which is within the automatic six-month filing extension period. However, payment is due on the date of the return without regard to any extensions of time for filing. (R&TC, § 19001.) Payment for the 2020 tax year was due on May 17, 2021,<sup>4</sup> but appellants did not pay their tax liability until December 18, 2021. Thus, FTB properly imposed the late payment penalty because appellants' payment was made after the due date of May 17, 2021.

On appeal, appellants argue that there is reasonable cause for the late payment of tax. First, appellants assert that during 2020, they sold an investment building, which resulted in a large taxable gain. Appellants assert that they relied on their accountant and a financial advisor to calculate the tax liability and to make the payment. Appellants assert that the payment was scheduled to be made from an investment account (as opposed to their primary bank account) and a confirmation number was received from FTB. However, appellants assert that their financial planner erroneously reinvested the funds and the payment was never actually made.

Appellants also assert that during this time, they were sheltering away from their home during the COVID-19 pandemic. Appellants assert that they are senior citizens with technological difficulties. Appellants assert that they did not have the skillset to monitor their bank account on the internet. Instead, appellants contend that they typically rely on bank statements, which were not mailed to their location during the pandemic. Appellants assert that, when they did review their bank statements, the balance decreased and they presumed payment

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<sup>4</sup> See <https://www.ftb.ca.gov/about-ftb/newsroom/2020-tax-year-extension-to-file-and-pay-individual.html>.

had been made. Appellants assert that they exercised good business judgment and that the penalty should be abated.<sup>5</sup>

As discussed above, reliance on a tax professional to make a timely payment of tax does not constitute reasonable cause. Appellants had a non-delegable duty to pay the tax. (*Boyle, supra*, at p. 251.) Appellants do not assert, and the Office of Tax Appeals (OTA) does not find, any evidence that appellants relied on a tax professional for substantive advice. Instead, the record indicates that the failure to make a timely payment was due to an error by their financial advisor (i.e., reinvesting funds that were designated for the payment of tax). Accordingly, OTA finds no basis to relieve the late payment penalty based on appellants' reliance on their financial planner.

Next, OTA would expect reasonably prudent taxpayers exercising due care and diligence to monitor their bank account and quickly ascertain whether a scheduled electronic payment from their account to FTB was in fact paid. (*Appeal of Scanlon*, 2018-OTA-075P.) Appellants have not provided any evidence of their efforts to ascertain that a payment was made. Moreover, appellants have not provided any evidence to support their contentions that they were prevented from reviewing their bank statements (either paper or electronic versions) in a timely matter. Appellants' unsupported assertions are insufficient to meet their burden of proof. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.)

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<sup>5</sup> Appellants also assert that the IRS abated a federal late payment penalty for the same year. Despite this contention, appellants have not provided evidence that the federal abatement was based on a showing of reasonable cause. Appellants also appear to request abatement of the penalties based on their prior good filing history. Revenue and Taxation Code section 19132.5 allows for the abatement of an individual's first-time timeliness penalties. However, that section only applies to tax years beginning on or after January 1, 2022. (R&TC, § 19132.5(a)(1), (f).)

HOLDING

Appellants have not shown reasonable cause for the late payment of their 2020 tax liability.

DISPOSITION

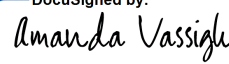
FTB’s action denying appellants’ claim for refund is sustained.

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Keith T. Long  
Administrative Law Judge

We concur:

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Amanda Vassigh  
Administrative Law Judge

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Sheriene Anne Ridenour  
Administrative Law Judge

Date Issued: 11/27/2023