

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
T. AYROM) OTA Case No. 20056222
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OPINION

Representing the Parties:

For Appellant: T. Ayrom

For Respondent: Phillip C. Kleam, Tax Counsel III

S. RIDENOUR, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, T. Ayrom (appellant)¹ appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claims for refund of \$783.98 for the 2018 tax year.²

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

ISSUE

Whether appellant has established reasonable cause for failing to make a timely payment of tax for the 2018 tax year.

FACTUAL FINDINGS

1. On September 2, 2019, appellant timely filed a joint 2018 California income tax return within the automatic extension period. Appellant reported a long-term capital gain from the sale of his principal residence, after reducing sale proceeds by adjusted basis and

¹ Although T. Ayrom filed a joint 2018 California income tax return with R. Casignia, who also signed the claims for refund, only T. Ayrom filed this appeal; therefore, “appellant” only refers to T. Ayrom.

² Appellant filed a claim for refund of \$800.00 on March 15, 2020, and again on March 24, 2020, for the tax year at issue. Both claims for refund are nearly identical as to appellant’s contentions. In response to the two nearly identical claims for refund, FTB issued one claim denial letter in the amount of \$783.98 (the late payment penalty amount), plus applicable interest.

allowing for a \$500,000 capital gain exclusion for married individuals filing a joint return, resulting in a taxable gain. Appellant reported tax due, which appellant untimely remitted on September 6, 2019.

2. On November 6, 2019, FTB issued a State Income Tax Balance Due Notice notifying appellant that FTB imposed a late payment penalty of \$783.98, plus applicable interest.
3. In response, appellant, prior to paying the amounts due, requested abatement of the late payment penalty and interest, which FTB denied.
4. Subsequently, appellant paid the outstanding liability and filed two nearly identical claims for refund for the 2018 tax year, which FTB denied. 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 a late payment of tax, a taxpayer must show that the failure to make a timely payment occurred despite the exercise of ordinary business care and prudence. (*Appeal of Scanlon*, 2018-OTA-075P.) The taxpayer bears the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Appeal of Triple Crown Baseball*, 2019-OTA-025P.)

Here, appellant claims he had reasonable cause for failing to make a timely payment of tax for the 2018 tax year because he had difficulty in finding a qualified tax professional to prepare his 2018 tax return. Specifically, appellant asserts that he sold his residence of 25 years in the summer of 2018, which resulted in capital gain taxes,³ and this transaction required him to “scrutinize his search of CPA’s [*sic*]” in order to find those who were sufficiently experienced in

³ Appellant requests to be “exempt . . . from at least a large portion” of his capital gains taxes. R&TC section 17131 incorporates Internal Revenue Code (IRC) section 121, which provides that a taxpayer may exclude up to \$500,000 from the sale of a house owned and used as a principal residence for at least two of five years before the sale if the taxpayer files married filing jointly. Appellant claimed, and received, the \$500,000 gain exclusion on his tax return. Therefore, appellant has received the applicable exclusion as allowed under the law, and this contention will not be addressed further.

complex real estate matters. Appellant contends that it took him until approximately June 2019, to find a tax professional able to handle the capital gain issue associated with the sale, and that the CPA took several months to complete the tax return. Appellant also asserts that he had to borrow money from a private lender to obtain the funds necessary to pay his 2018 federal and state taxes, and that finding a lender consumed a great deal of appellant's time and efforts. Appellant claims that it was not until September 2019, that he was able to pay his taxes. Finally, appellant contends that the IRS abated the federal late payment penalty under its "First Time Abate" program, and that his good filing history in California is sufficient to abate the late payment penalty at issue, even if reasonable cause has not been shown.

Lack of documentation or difficulty in calculating a tax liability does not, by itself, constitute reasonable cause for a late payment of tax. (*Appeal of Moren*, 2019-OTA-176P.) A taxpayer's difficulty in determining income with exactitude does not negate the requirement that the taxpayer make payments of tax based upon a reasonably accurate estimate of his or her tax liability. (*Appeal of Rougeau*, 2021-OTA-335P.) A taxpayer must establish that he or she could not have acquired the information necessary to make an estimate of their tax liability. (*Appeal of Moren, supra.*)

Furthermore, it is well-settled law that a taxpayer's failure to make a timely payment or file a return is not excused by the taxpayer's reliance on a tax preparer to meet a statutory deadline, and such reliance does not constitute reasonable cause because a taxpayer has a personal, non-delegable obligation to meet statutory deadlines. (See *Appeal of Berolzheimer* (86-SBE-172) 1986 WL 22860; see also *U.S. v. Boyle* (1985) 469 U.S. 241, 251-252 (*Boyle*)). The courts have applied this bright-line rule—as articulated in *Boyle*, a case involving a late filing penalty—to the late payment penalty, even in circumstances where a taxpayer acted prudently in dealing with their agent or employee. (See, e.g., *Conklin Bros. of Santa Rosa Inc. v. United States* (9th Cir. 1993) 986 F.2d 315; *Kimdun Inc., et al. v. U.S.* (C.D. Cal. 2016) 202 F.Supp.3d 1136, 1144-1146.)

Appellant sold his residence in the summer of 2018, which resulted in a capital gain, almost a year prior to the 2018 tax year payment due date of April 15, 2019. A taxpayer must establish that he or she could not have acquired the information necessary to make an estimate of their tax liability. (*Appeal of Moren, supra.*) The Office of Tax Appeals (OTA) finds that as early as the summer of 2018, appellant acquired the necessary information to make a reasonably

accurate estimate of his 2018 tax liability, as it relates to the capital gain, and make a timely payment accordingly.

While appellant contends that it took him approximately until June 2019, to find a tax professional able to handle the capital gain issue associated with the sale, a taxpayer's difficulty in determining income with exactitude does not negate the requirement that a taxpayer make payments of tax based upon a reasonably accurate estimate of their tax liability. (*Appeal of Rougeau, supra.*) Appellant further contends that the CPA took several months to complete appellant's tax return; however, appellant had a personal, non-delegable obligation to meet the payment due date. (*Boyle, supra.*) OTA finds that appellant failed to meet his burden of proving reasonable cause for failing to make a timely payment of tax for the 2018 tax year.

Concerning appellant's contention of financial difficulties, financial hardship may constitute reasonable cause to excuse the late payment of tax. Reasonable cause based on financial hardship is explained in federal Treasury Regulation section 301.6651-1(c)(1), which provides that the taxpayer must show the exercise of ordinary business care and prudence and was either unable to pay the tax or would suffer an undue hardship by paying by the due date.⁴ Treasury Regulation section 301.6651-1(c)(1) further provides that all the facts and circumstances, including the amount and nature of the taxpayer's expenditures in light of the income (or other amounts) the taxpayer could, at the time of such expenditures, reasonably expect to receive prior to the date prescribed for the payment of the tax, will be considered. Thus, a taxpayer can prove ordinary business care and prudence by showing reasonable efforts to conserve sufficient assets in marketable form to satisfy the tax liability. Additionally, "undue hardship" is defined in Treasury Regulation section 1.6161-1(b) as not merely a "general hardship," but rather "more than an inconvenience to the taxpayer." Although appellant claims to have suffered financial difficulty, he has not provided any evidence to substantiate those claims or show that his financial difficulties constitute reasonable cause under the law. Absent such evidence, appellant has not shown reasonable cause. Furthermore, appellant sold his primary residence, resulting in a taxable capital gain; nevertheless, there is no evidence that appellant made any effort to conserve a sufficient portion of the funds received for California

⁴ Although there are no FTB regulations interpreting R&TC section 19132, that section is patterned after IRC section 6651. Therefore, the interpretation and effect given the federal provision by the federal courts and administrative bodies are relevant in determining the proper construction of the California statute. (*Andrews v. Franchise Tax Bd.* (1969) 275 Cal.App.2d 653, 658; *Rihn v. Franchise Tax Bd.* (1955) 131 Cal.App.2d 356, 360.)

taxes. Therefore, appellant did not take steps to ensure he conserved sufficient funds from the sale of his residence to pay the tax that would be owed. Appellant has not established reasonable cause to abate the late payment penalty due to financial hardship.

Regarding appellant's references to the IRS abating appellant's federal late filing and late payment penalties, the IRS administers a program called "First Time Abate" through which the IRS abates first-time timeliness penalties if a taxpayer has timely filed returns and paid taxes due for the preceding three years. In this case, the IRS abated appellant's 2018 late payment penalty based on the first-time abate program. California, however, had no such program until the 2022 taxable year (see R&TC, § 19132.5); thus, as previously stated, California law for 2018 allows abatement only on a showing that the failure to pay timely was due to reasonable cause and not due to willful neglect. As the evidence shows that appellant's failure to pay was not due to reasonable cause, there is no basis to abate the penalty.

HOLDING

Appellant has not established reasonable cause for failing to make a timely payment of tax for the 2018 tax year.

DISPOSITION

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

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Sheriene Anne Ridenour

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Sheriene Anne Ridenour
Administrative Law Judge

We concur:

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John O Johnson

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John O. Johnson
Administrative Law Judge

DocuSigned by:

Richard Tay

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Richard Tay
Administrative Law Judge

Date Issued: 6/27/2023