

FACTUAL FINDINGS

1. Appellants filed, by mail, a 2021 California income tax return (Form 540) on May 9, 2022,¹ within the automatic extension period, reporting total tax of \$31,027, withholdings of \$5,697, and tax due of \$25,330. Appellants did not include a payment to FTB.
2. On August 22, 2022, FTB issued to appellants a Notice of Tax Return Change – Revised Balance, which showed an outstanding balance of \$25,330 tax and imposed a late-payment penalty of \$1,899.75, plus interest.
3. Appellants paid the balance due on August 24, 2022, and requested a refund of the late- payment penalty.
4. 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 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.) Appellants did not remit payment until August 24, 2022, four months after the due date of April 15, 2022; therefore, FTB properly imposed the late-payment penalty.²

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 Rougeau*, 2021-OTA-335P). The taxpayer bears the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Ibid.*) As to appellants’ burden, the applicable standard of proof is by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(b).) To meet this

¹ Appellants claim that they mailed the return with a postmark of April 15, 2022. The record does not include mailing information, and the date does not affect the outcome of this appeal.

² Appellants initially contested the calculation of the late-payment penalty. FTB provided, as Exhibit E, a detailed calculation. Appellants no longer contest the calculation.

evidentiary standard, a party must establish by documentation or other evidence that the circumstances it asserts are more likely than not to be correct. (*Appeal of Rougeau, supra.*)

Appellants assert that they provided routing and bank account numbers when they mailed their return to FTB, “for the purpose of direct debit as is common practice.” Thus, they contend that FTB had their payment information and should have debited their account for the \$25,330 tax due. In support, appellants submit a Form CA8879.LD2 (Form 8879.LD2), Direct Deposit/Debit Information, which contains their routing and account information. Appellant W. Budiman testified that the information on that form was included with their mailed tax return. Appellants contend that it was FTB’s administrative error in not debiting their payment that caused the delay. Appellants argue that *U.S. v. Boyle* (1985) 469 U.S. 241 supports abatement of the penalty because they relied on their tax preparer for non-substantive advice; namely, to file their return and facilitate the payment of tax. Appellants further assert that they meet the criteria for a one-time abatement of the late-payment penalty.

The record does not reflect that appellants timely provided FTB with a bank account number and routing number to be used to pay the \$25,330 tax balance. On the contrary, Form 8879.LD2 clearly states that the document is to be retained for appellants’ records. The only place on Form 540 to include routing and bank account information is in the refund and direct deposit section of the return. This section is used when a refund is due to the taxpayers and taxpayers request direct deposit into their account – not for direct debits from taxpayers’ account when tax is owed by the taxpayers to FTB. Form 540 instructs taxpayers to either mail a payment (address provided) or pay online through ftb.ca.gov/pay. Form 540 does not provide a space for appellants to enter routing and account information from which to debit their tax due.

Appellants’ tax preparation service indicates that it “mails dozens of tax returns to the FTB annually with the taxpayers[?] account and routing number on the [Form] 540.” Specifically, the service states that it always includes account and routing information on all Form 540s it submits, whether electronically or by mail. The record, however, does not support this assertion. Appellants’ routing number and account number are nowhere to be found on the filed tax return. The only place those numbers appear in OTA’s record is on Form 8879.LD2, which is for appellants’ records only, and appellants have offered no evidence showing it was actually sent to FTB. Although appellants attempt to distinguish the holding in *Boyle, supra*, their interpretation of that holding is incorrect. *Boyle* does not excuse administrative tasks that

are delegated to a professional. Rather, *Boyle* creates a bright line rule that says the opposite; that taxpayers may not delegate filing and payment tasks but are personally responsible for ensuring those tasks are performed timely. Appellants did not exercise reasonable business care and prudence by delegating filing and payment tasks to their professional.

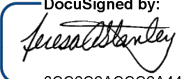
With respect to appellants' claim that they meet the criteria for a one-time abatement of the late-payment penalty, OTA notes that the one-time abatement is only applicable to requests for abatement made for taxable years beginning on or after January 1, 2022. (R&TC, § 19132.5.) Thus, that assertion also fails. Appellants have not demonstrated reasonable cause for their late payment of tax.

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: 2/6/2024