

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

In the Matter of the Appeal of: ) OTA Case No. 230412954  
G. LIU AND )  
J. LU )  
\_\_\_\_\_ )

**OPINION**

Representing the Parties:

For Appellants: G. Liu  
J. Lu

For Respondent: Andrea Watkins, Attorney

V. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, G. Liu and J. Lu (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claims for refund of \$2,234.00 and \$9,721.60, plus interest, for the 2021 tax year.

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

**ISSUES**

1. Whether appellants have established reasonable cause to abate the late-payment penalty.
2. Whether the penalty for underpayment of estimated tax (estimated tax penalty) can be waived or abated.
3. Whether appellants have established a basis to abate interest.

**FACTUAL FINDINGS**

1. During 2021, appellants were partners in Seagull Equity Investments (A), LLC (the Partnership), which received foreign stock trading income and paid foreign tax withholdings.

2. Appellants made estimated tax payments of \$12,055 and \$30,000 on May 16, 2021, and January 15, 2022, respectively.
3. On March 15, 2022, appellants received a Schedule K-1 from the Partnership.
4. On or around March 24, 2022, appellants engaged the services of Ms. Wang, an experienced California CPA, to prepare their 2021 tax return. On March 29, 2022, appellants received email confirmation from Ms. Wang that appellants had provided Ms. Wang with all of the documents necessary to prepare their return. The email stated that Ms. Wang expected to complete appellants' return no later than April 10, 2022, in advance of the April 15, 2022 deadline.
5. On September 1, 2022, Ms. Wang emailed appellants stating that she had almost completed appellants' 2021 tax return and there would be "around [...] \$32,000 of state tax refund" due to appellants.
6. On September 22, 2022, appellants timely filed their 2021 return within the automatic extension period and reported \$121,520 tax due. Appellants self-assessed interest and a late-payment penalty. Appellants paid the balance due on the same day that they filed their return.
7. On October 3, 2022, FTB issued appellants a Notice of Tax Return Change - Revised Balance imposing a late-payment penalty of \$9,721.60, an estimated tax penalty of \$2,234.00, and interest. On October 8, 2022, appellants paid the balance due.
8. On November 15, 2022, appellants filed a claim for refund seeking abatement of the late-payment and estimated tax penalties imposed by FTB, and interest abatement. On February 21, 2023, FTB issued two notices, one denying appellants' claim for refund of the estimated tax penalty, and the other denying appellants' claim for refund of the late-payment penalty.
9. Appellants timely filed this appeal.

### DISCUSSION

#### Issue 1: Whether appellants have established reasonable cause to abate the late-payment penalty.

California imposes a penalty for the failure to pay the amount shown as due on a return on or before the due date of the return, unless it is shown that the late payment is due to reasonable cause and not willful neglect. (R&TC, § 19132(a)(1).) The late-payment penalty is

the sum of two figures that may not exceed 25 percent of the unpaid tax. (R&TC, § 19132(a)(2).) The first part is 5 percent of the tax that remained unpaid as of the due date. (R&TC, § 19132(a)(2)(A).) The second part is 0.5 percent of the unpaid tax balance per month for each month, or portion of a month, that the tax remains unpaid after the due date, not to exceed 40 months. (R&TC, § 19132(a)(2)(B).) When FTB imposes a penalty, the law presumes that the penalty was imposed correctly, and the burden of proof is on the taxpayer to establish otherwise. (*Appeal of Xie*, 2018-OTA-076P.) To overcome the presumption of correctness attached to the penalty, a taxpayer must provide credible and competent evidence supporting a claim of reasonable cause; otherwise, the penalty cannot be abated. (*Ibid.*)

To establish reasonable cause, the 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 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 Belcher*, 2021-OTA-284P.)

Here, appellants paid the balance of the tax due on September 22, 2022, after the payment due date of April 15, 2022. Appellants had an outstanding tax due balance of \$121,520 on the payment due date; thus, the 5 percent penalty amount is \$6,076 and the monthly penalty amount is \$3,645.60 (\$121,520 multiplied by 0.005, multiplied by 6 months), for a total penalty of \$9,721.60. The Office of Tax Appeals (OTA) finds that the late-filing penalty was correctly calculated and imposed.

On appeal, appellants assert that there is reasonable cause to abate the late-payment penalty. Appellants contend that the late payment occurred because the complex nature of their returns for 2021 necessitated engagement of a return preparer, who erroneously informed appellants that they had overpaid the tax due and would be receiving a return. Appellants contend that the return preparer did not complete the return until September of 2022, at which point they immediately paid the tax due. In support, appellants provide a copy of an email from their return preparer dated September 1, 2022, stating that appellants would receive a state tax refund of \$32,000.

It is well settled 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 because a taxpayer has a personal, non-delegable obligation to meet statutory deadlines. (See *U.S. v. Boyle* (1985) 469 U.S. 241

(*Boyle*); see also *Appeal of Rougeau*, 2021-OTA-335P [applying *Boyle*, a case involving a late-filing penalty, to the late-payment penalty].)

In *Boyle*, the U.S. Supreme Court held that “[t]he failure to make a timely filing of a tax return is not excused by the taxpayer’s reliance on an agent, and such reliance is not ‘reasonable cause’ for a late filing....” (*Boyle, supra*, 469 U.S. at p. 252.) The Court, however, did observe that reasonable cause may exist if a taxpayer reasonably relies on the advice of an accountant or attorney with respect to substantive matters of tax law, even when such advice turned out to have been mistaken. (*Id.* at pp. 250-251.)

To establish that reasonable cause exists based on reliance on a tax professional, a taxpayer must show that it reasonably relied on a tax professional for substantive tax advice 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. (See *Appeal of Summit Hosting*, 2021-OTA-216P, citing *Boyle, supra*, 469 U.S. 241.) In contrast, reliance on an expert cannot function as a substitute for compliance with an unambiguous statute. (*Boyle, supra*, 469 U.S. at p. 251.)

Appellants contend that they have reasonable cause for failing to timely pay the tax due because they timely submitted their tax information to their return preparer, Ms. Wang, and relied on her advice that appellants had already made sufficient state tax payments to cover their 2021 tax liability. Appellants assert that they did not learn that they had underpaid their California tax liability until Ms. Wang completed their return in September of 2022. Appellants provide an email dated March 29, 2022, prior to the payment deadline of April 15, 2022, from Ms. Wang, stating that she had received the documents to prepare appellants’ return and that she “expected to complete [the] return no later than April 10.” Appellants also provide a second email from Ms. Wang dated September 1, 2022, after the April 15, 2022 deadline, stating that appellants would receive “around ...\$32,000 of state tax refund.”

Appellants also provide an excerpt from Ms. Wang’s website, stating that Ms. Wang has nearly 30 years of experience in accountancy, possesses certifications including a CPA and a master’s degree in taxation, and is a member of the American Institute of Certified Public Accountants and the society of California Certified Public Accounts.

The emails from Ms. Wang to appellants make clear that appellants relied on Ms. Wang's tax advice concerning the amount of appellants' California tax liability. Ms. Wang assured appellants that they would have no tax due and would in fact be receiving a refund. Appellants' tax year detail shows that appellants made estimated payments totaling \$42,055 during 2021. Appellants' email from Ms. Wang dated March 29, 2022, confirms that Ms. Wang was provided with the necessary documents to complete appellants' return, and stated her confirmation that the return would be completed by April 10, in advance of the April 15, 2022 deadline. Appellants have also demonstrated that Ms. Wang, a California CPA, is a tax professional with competency in the preparation of California tax returns.

Although reliance on a tax professional cannot function as a substitute for compliance with an unambiguous statute, in this case, appellants did not rely on Ms. Wang for compliance with an unambiguous statute. (*Boyle, supra*, 469 U.S. at p. 251.) For example, appellants do not assert that they relied on Ms. Wang to inform them of the due date of their tax payment, which is an unambiguous statute. Instead, appellants relied on Ms. Wang's substantive tax advice regarding the amount of their tax liability. Appellants' reliance on a competent tax professional as to the computation of their California tax liability is a substantive matter. Accordingly, appellants have demonstrated that they reasonably relied on a tax professional for substantive tax advice, that the tax professional, Ms. Wang, possessed competency in tax law, and that her advice was based on appellants' full disclosure of relevant facts and documents. Consequently, appellants have demonstrated reasonable cause to abate the late-payment penalty.

Issue 2: Whether the estimated tax penalty can be waived or abated.

Except as otherwise provided, R&TC section 19136 conforms to Internal Revenue Code (IRC) section 6654 and imposes an addition to tax, which is treated as and often referred to as a penalty, where taxpayers fail to timely pay estimated tax.<sup>1</sup> The estimated tax penalty is similar to an interest charge in that it is calculated by applying the applicable interest rate to the underpaid estimated tax. (See IRC, § 6654(a); R&TC, § 19136(b); *Appeal of Johnson*, 2018-OTA-119P.)

For the 2021 tax year, appellants' adjusted gross income exceeded \$1 million and therefore the required annual payment was 90 percent of the tax shown on the current year

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<sup>1</sup> Where estimated tax payments are due, R&TC section 19136.1(a)(2) generally requires, for California income tax purposes, that the payments be made in installments on or prior to April 15 and June 15 of the applicable tax year, and January 15 of the subsequent tax year. For federal income tax purposes, an additional installment is also due by September 15 of the applicable tax year. (IRC, § 6654.)

return. (R&TC, § 19136.3.) Appellants' required annual payment for 2021 was \$131,374.50 (90 percent of appellants' total tax of \$322,005, less \$158,430 of withholding credits). The estimated tax payments to be made were \$39,412.35 on April 15, 2021 (30 percent of tax due), \$52,549.80 on June 15, 2021 (40 percent of tax due), \$0 on September 15, 2021 (0 percent of tax due), and \$39,412.35 on January 15, 2022 (30 percent of tax due). Here, appellants remitted \$12,055 on May 16, 2021, and \$30,000 on January 15, 2022. The combined payments of \$42,055 were applied to appellants' first quarter payment when received by FTB after the payment due date and the remaining \$2,642.65 was applied towards appellants' second quarter liability.<sup>2</sup> Accordingly, appellants did not timely pay their first, second, or fourth quarter installments, and the estimated tax payments appellants made after the quarterly deadlines were insufficient to cover the second and fourth quarters. FTB properly imposed an estimated tax penalty on the underpayments.

Appellants do not contest the imposition or computation of the estimated tax penalty. Instead, appellants present reasonable cause arguments for abatement of the estimated tax penalty. However, there is no provision in the IRC or R&TC that allows the estimated tax penalty to be abated based solely on a finding of reasonable cause. (*Appeal of Saltzman*, 2019-OTA-070P.) As a result, there is no general reasonable cause exception to the imposition of the estimated tax penalty, and the estimated tax penalty imposed under IRC section 6654 is mandatory unless taxpayers establish that a statutory exception applies. (*Ibid.*; *Appeal of Scanlon*, *supra*.) IRC section 6654(e)(3)(A) provides that the taxing agency may waive the estimated tax penalty if it determines that “by reason of casualty, disaster, or other unusual circumstances the imposition of [the estimated tax penalty] would be against equity and good conscience.”<sup>3</sup> The exception for unusual circumstances is considerably narrower than reasonable cause. (*Appeal of Mazdyasni*, 2018-OTA-049P.)

The phrase “casualty, disaster, or other unusual circumstances” generally refers to unexpected events that cause a hardship or loss such that, due to the circumstances, it would be

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<sup>2</sup> \$42,055 less first quarter estimated payment of \$39,412.35 results in \$2,642.65 applied towards appellants' second quarter payment.

<sup>3</sup> IRC section 6654(e)(3)(B) provides that FTB may waive the tax where it determines that: (i) during the tax year for which the estimated payments were required to be made, or the preceding year, the taxpayer either retired after having attained age 62, or became disabled, and (ii) the underpayment was due to reasonable cause and not willful neglect. Appellants have not alleged that this exception applies; therefore, this Opinion will not discuss the exception further.

“against equity and good conscience” to impose the estimated tax penalty. (*Appeal of Saltzman, supra.*) Appellants do not allege that they were subject to unusual circumstances, only that they made an unintentional error. The taxpayer’s good faith or that the taxpayer acted reasonably under the circumstances is not, on its own, relevant to waiver under IRC section 6654(e)(3)(B), and that section does not permit abatement of the estimated tax penalty solely on the basis of reasonable cause. (*Appeal of Mazdyasni, supra.*)

Here, appellants assert that they failed to make correct estimated tax payments because they were unaware of their tax liability until their return preparer informed them of their tax liability in September of 2022. Appellants’ argument focuses on the failures of their return preparer, but the reasonable cause standard at issue in *Boyle, supra*, is not the applicable standard for relief for the estimated tax penalty. Furthermore, a taxpayer’s good faith or the fact that a taxpayer acted reasonably under the circumstances is not, on its own, relevant to waiver under IRC section 6654(e)(3)(B). (*Appeal of Mazdyasni, supra; Appeal of Saltzman, supra.*)

As described above, the estimated tax penalty is similar to an interest charge and compensates the government for the time value of the tax that is due but not paid until a later date. OTA does not consider the estimated tax penalty to be imposed inequitably under appellants’ circumstances. Thus, the estimated tax penalty may not be waived or abated.

### Issue 3: Whether appellants have established a basis to abate interest.

Tax is due on the original due date of the return without regard to any filing extension. (R&TC, § 19001.) If a taxpayer does not pay the tax by the original due date of the tax return, or if FTB assesses additional tax, the law provides for charging interest on the balance due. (R&TC, § 19101.) Imposition of interest is mandatory; it is not a penalty, but it is compensation for a taxpayer’s use of money after it should have been paid to the state. (*Appeal of Moy, 2019-OTA-057P.*) There is no reasonable cause exception to the imposition of interest. (*Appeal of GEF Operating, Inc., 2020-OTA-057P.*) To obtain relief from interest, a taxpayer must qualify under the waiver provisions of R&TC sections 19104, 19112, or 21012. (*Appeal of Moy, supra.*)

In this case, appellants only provide reasonable cause type arguments for the abatement of interest. Appellants have not shown that they qualify for waiver or abatement of interest under the provisions of R&TC sections 19104, 19112, or 21012.<sup>4</sup> Additionally, there is no

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<sup>4</sup> OTA does not have jurisdiction to review FTB’s interest abatement determination under R&TC section 19112. (*Appeal of Moy, supra.*)

reasonable cause exception to the imposition of interest. (*Appeal of GEF Operating, Inc., supra.*) Consequently, OTA concludes that appellants are not entitled to interest abatement.


HOLDINGS


1. Appellants have established reasonable cause to abate the late-payment penalty.
2. The estimated tax penalty cannot be waived or abated.
3. Appellants have not established a basis to abate interest.

DISPOSITION

The action of FTB in denying appellants’ claim for refund of the late-payment penalty in the amount of \$9,721.60, plus applicable interest on that penalty, for 2021 is reversed, and appellants’ claim for refund of such amount is granted. FTB’s action in denying appellants’ claim for refund of the estimated tax penalty is sustained.

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 Veronica I. Long  
 Administrative Law Judge

We concur:  
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 Teresa A. Stanley  
 Administrative Law Judge

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 Suzanne B. Brown  
 Administrative Law Judge

Date Issued: 3/11/2024