

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

In the Matter of the Appeal of: ) OTA Case No. 221212139  
Y. BAYANI AND )  
A. BAYANI )  
\_\_\_\_\_ )

**OPINION**

Representing the Parties:

For Appellants: Y. Bayani and A. Bayani

For Respondent: Tristen Thalhuber, Attorney

For Office of Tax Appeals: Jacqueline Watson,  
Graduate Student Assistant

A. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Y. Bayani and A. Bayani (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$3,072.22 for the 2021 tax year.<sup>1</sup>

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, § 30209.05.) Appellants waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

**ISSUE**

Whether appellants have established reasonable cause to abate the late-payment penalty.

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<sup>1</sup> This amount consists of a late-payment penalty of \$2,808.20 and applicable interest of \$264.02. Although the amount of appellants’ refund claim includes interest accrued on the late-payment penalty, that interest would be abated if the penalty were abated. For this reason, interest abatement will not be discussed further.

### FACTUAL FINDINGS

1. On June 28, 2022, appellants timely filed their 2021 California Resident Income Tax Return.<sup>2</sup> On their 2021 return, appellants reported a total tax of \$249,404. After applying income tax withholdings of \$179,201, and estimated tax and other payments of \$27,000,<sup>3</sup> appellants reported a tax due of \$43,203. Appellants remitted a payment of \$43,203 on that same date.
2. FTB accepted appellants' 2021 return as filed but imposed a late-payment penalty. FTB issued a Notice of Tax Return Change – Revised Balance on July 19, 2022, which informed appellants of the imposition of a late-payment penalty and interest.
3. On August 16, 2022, appellants remitted a payment that satisfied the balance due on their 2021 tax year account.
4. Appellants subsequently filed an FTB Form 2917, Reasonable Cause – Individual and Fiduciary Claim for Refund, claiming a refund of the late-payment penalty.
5. FTB denied the refund claim stating that appellants did not provide reasonable cause to abate the late-payment penalty.
6. Appellants filed this timely appeal.

### DISCUSSION

In general, R&TC section 19001 provides that personal income tax imposed “shall be paid at the time and place fixed for filing the return (determined without regard to any extension of time for filing the return).” As calendar-year taxpayers, taxpayers were required to pay their tax for the 2021 tax year on or before April 15, 2022. (R&TC, §§ 18566, 19001.) An extension of time to file a return is not an extension of time to pay tax. (R&TC, § 18567(b).) Tax is due on the original due date of the return without regard to the extension to file. (R&TC, § 18567(b).)

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<sup>2</sup> Although returns are generally due on April 15, California allows an automatic six-month extension to file a return within six months of the original due date. No written request is required, and the granting of the extension is conditioned solely upon the filing of a return within the automatic extension period. (R&TC, § 18567(a)(1); Cal. Code Regs., tit. 18, § 18567(a).)

<sup>3</sup> For California purposes, estimated tax payments for the 2021 tax year were due on April 15, 2021, June 15, 2021, and January 15, 2022. (R&TC, § 19136.1; IRC, § 6654(c)(2).)

The late-payment penalty is imposed when taxpayers fail to pay the amount shown as due on the return on or before the payment due date unless the taxpayers can demonstrate that the late payment was due to reasonable cause and not willful neglect. (R&TC, § 19132(a).) When FTB imposes a penalty, the law presumes that the penalty was imposed correctly. (*Appeal of Xie, 2018-OTA-076P.*)

Taxpayers bear the burden of proving the existence of reasonable cause and the absence of willful neglect. (*Appeal of Triple Crown Baseball LLC, 2019-OTA-025P.*) To establish reasonable cause, taxpayers must show that their failure to make a timely payment of tax occurred despite the exercise of ordinary business care and prudence, or that such cause existed as would prompt an ordinarily prudent businessperson to have so acted under similar circumstances. (See *Appeal of Head and Feliciano, 2020-OTA-127P.*)

Reasonable cause may exist if taxpayers reasonably relied on the substantive tax advice of a tax professional. (*Appeal of Summit Hosting LLC, 2021-OTA-216P*, citing *U.S. v. Boyle* (1985) 469 U.S. 241, 251.) Taxpayers must show that the tax professional has competency in the subject tax law, and the advice given by that tax professional was based on taxpayers' full disclosure of relevant facts and documents. (*Ibid.*) In contrast, reliance on an expert cannot serve as a substitute for compliance with an unambiguous statute. (*Ibid.*)

Here, FTB properly imposed the late-payment penalty because appellants did not pay their tax liability in full until June 28, 2022. Appellants argue that they have reasonable cause for the late payment of tax because they relied on their tax professional's advice. Appellants assert that their tax professional advised them that if they paid the proper amount of "estimated taxes," they could file their "taxes after the tax due date" within the extension period. Appellants also assert that, relying on this advice, they calculated their estimated taxes based on all available documents available as of January 2022, and they made a "large estimated tax payment" in February 2022.<sup>4</sup> Appellants contend that the late-payment penalty should be abated because they exercised their due diligence when they relied on their tax professional's advice, which they refer to as "improper guidance."

It appears that the advice appellants claim to have received relates to when they could file their 2021 return. The late-payment penalty at issue is based on appellants' failure to pay their

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<sup>4</sup> FTB's records show that on March 10, 2022, appellants made an extension payment of \$27,000 for the 2021 tax year and not in February 2022 as appellants contend.

2021 taxes by no later than April 15, 2022. Appellants have not produced evidence of any substantive advice they received from their tax professional or the disclosures they made to their tax professional concerning the relevant facts and documents. Most importantly, appellants' claimed reliance on the advice of a tax professional cannot function as a substitute for compliance with unambiguous statutes (R&TC, §§ 18566, 19001), which required appellants to pay their 2021 tax liability on or before April 15, 2022. (*Appeal of Summit Hosting LLC, supra.*) Appellants' claimed reliance on their tax professional's advice does not establish reasonable cause.

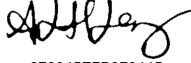
Appellants also contend that the late-payment penalty should be abated due to their history of timely filing their returns. The Office of Tax Appeals can only grant relief where the law specifically allows. (*See Appeal of Xie, supra.*) The law does not allow the Office of Tax Appeals to abate the late-payment penalty for the 2021 tax year based on appellants' past compliance history.<sup>5</sup> Accordingly, appellants have not demonstrated reasonable cause to abate the late-payment penalty.

#### HOLDING

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

#### DISPOSITION

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

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Andrea L.H. Long  
Administrative Law Judge

Date Issued: 2/29/2024

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<sup>5</sup> R&TC section 19132.5, which is effective for tax years beginning on or after January 1, 2022, allows an individual taxpayer to request a one-time abatement of a timeliness penalty. As the 2021 tax year is at issue here, this newly enacted provision is inapplicable.