

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

In the Matter of the Appeal of: )  
K. CLARK ) OTA Case No. 230212558  
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**OPINION**

Representing the Parties:

For Appellant: K. Clark  
For Respondent: Bradley J. Coutinho, Attorney Supervisor  
For Office of Tax Appeals: Rachel Lee, Graduate Student Assistant

J. LAMBERT, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, K. Clark (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$5,079.06 for the 2021 tax year.

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

**ISSUE**

Whether the late-payment penalty should be abated.

**FACTUAL FINDINGS**

1. Appellant hired a CPA to file his 2021 California Resident Income Tax Return (Form 540).
2. On April 13, 2022, appellant timely filed his 2021 California tax return.
3. On June 2, 2022, after the payment due date on April 15, 2022, appellant paid the balance reported on his return.
4. FTB issued appellant a State Income Tax Balance Due Notice on June 15, 2022, imposing a late-payment penalty of \$5,079.06, and interest.
5. In response, appellant requested abatement of the penalty.

6. On August 22, 2022, appellant remitted a payment of \$5,445.71, satisfying the late-payment penalty and interest.
7. Appellant subsequently filed a claim for refund, requesting abatement of the late-payment penalty due to reasonable cause because appellant's CPA erroneously entered appellant's bank account information when filing his Form 540, which prevented the funds from being withdrawn from the account.
8. FTB denied appellant's claim for refund.
9. Appellant timely filed this appeal.

### DISCUSSION

R&TC section 19132(a)(1)(A) 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.) When FTB imposes a late-payment penalty, the law presumes that the penalty was imposed correctly. (*Appeal of Xie*, 2018-OTA-076P.)<sup>1</sup> Here, appellant does not dispute the imposition or calculation of the late-payment penalty, but rather requests that the penalty be abated due to reasonable cause.

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).) The taxpayer bears the burden of proving that reasonable cause exists to support an abatement of the penalty. (*Appeal of Xie, supra.*) Unsupported assertions are not sufficient to satisfy the taxpayer's burden of proof. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.)

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, or that cause existed as would prompt an ordinarily intelligent and prudent businessperson to have so acted under similar circumstances. (*Appeal of Belcher*, 2021-OTA-284P.) The U.S. Supreme Court has held that, under certain circumstances, taxpayers may establish reasonable cause when they reasonably rely on substantive advice of a tax professional. (*U.S. v. Boyle* (1985) 469 U.S. 241, 250 (*Boyle*); see also *Appeal of Summit Hosting LLC*, 2021-

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<sup>1</sup> Although this and other cases cited may concern the late-filing penalty, the analysis is substantially the same as to the late-payment penalty; therefore, authorities persuasive or controlling in one analysis may be equally persuasive or controlling in the other. (*Appeal of Moren*, 2019-OTA-176P; *Appeal of Triple Crown Baseball LLC*, 2019-OTA-025P.)

OTA-216P [applying *Boyle* to the California late-filing and late-payment penalties].) A taxpayer's reliance on a tax professional to take care of an administrative act, including paying a tax, generally does not constitute reasonable cause. (*Boyle, supra.*)

Here, appellant argues that the late-payment penalty should be abated because he relied on his CPA to timely pay the tax due, but his CPA incorrectly input appellant's bank account information into the e-filing system before the April 15, 2022 payment due date, which appellant claims was a simple and unintended clerical mistake. Appellant notes that he provided the correct routing and checking account number to the CPA and that he relied on his CPA to comply with the rules and regulations of California's tax filing requirements. Appellant attached a letter from his CPA evidencing the CPA's acknowledgment of the clerical error in entering the bank account information, which prevented the funds from being withdrawn from appellant's bank account.

While the Office of Tax Appeals (OTA) recognizes that appellant intended to meet his tax obligation and promptly paid the balance due after discovering the error, precedent on this issue compels OTA to conclude that appellant has not established reasonable cause for his late payment. As mentioned above, to establish reasonable cause, a taxpayer must show that the late payment occurred despite the exercise of ordinary business care and prudence, or that cause existed as would prompt an ordinarily intelligent and prudent businessperson to have so acted under similar circumstances. (*Appeal of Belcher, supra.*) While appellant's statement that he provided the correct routing and checking account number is credible, OTA concludes that an ordinarily intelligent and prudent businessperson would have done more than delegate the tasks necessary to pay their California tax liability. (*Appeal of Fisher, 2022-OTA-337P.*) A taxpayer exercising due care and diligence would monitor his or her bank account and would quickly ascertain whether a scheduled electronic payment from the account was in fact paid. (*Appeal of Scanlon, 2018-OTA-075P.*) The failure to remit the balance due on a tax liability caused by an oversight does not, by itself, constitute reasonable cause. (*Appeal of Friedman, 2018-OTA-077P.*)

Here, the record does not show appellant took any such action to monitor his bank account and ensure successful transmission of his scheduled California tax payment. Rather, appellant chose to rely solely on his CPA to make a timely payment. As established by the U.S. Supreme Court, every taxpayer has a personal, non-delegable duty to timely file a tax return and

make a payment of tax. (*Boyle, supra*, 469 U.S. at p. 252; *Appeal of Berolzheimer* (86-SBE-172) 1986 WL 22860.) Therefore, a taxpayer's reliance on an agent to make a timely payment of tax does not, by itself, constitute a reasonable cause for an untimely payment. (*Appeal of Berolzheimer, supra*.) Moreover, the CPA's oversight does not, by itself, constitute reasonable cause. (*Appeal of Friedman, supra*.) Accordingly, appellant has not established reasonable cause for the untimely payment.

Appellant also contends that he has a good history of tax compliance and has always paid his taxes on time. Appellant points to the following facts to illustrate his diligence: he has never filed a late tax return or been audited; he always had more than an adequate amount of federal and state taxes withheld from his paycheck and received refunds; he complied with federal and state tax regulations despite his extended work-related travels; and he remitted the payment shortly after realizing the error. Although FTB was granted the authority to provide taxpayers with a one-time abatement of timeliness penalties, the one-time penalty abatement is only applicable for taxable years beginning on or after January 1, 2022. (See R&TC, § 19132.5.) Here, the tax year at issue is the 2021 tax year. Therefore, appellant is not entitled to first-time abatement of the late-payment penalty based on a good history of tax compliance.

HOLDING

The late-payment penalty should not be abated.

DISPOSITION

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

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*Josh Lambert*  
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Josh Lambert  
Administrative Law Judge

We concur:

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*Asaf Kletter*  
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Asaf Kletter  
Administrative Law Judge

DocuSigned by:  
*Kenneth Gast*  
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Kenneth Gast  
Administrative Law Judge

Date Issued: 6/3/2024