

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: )  
RYAN R. PLEWE DDS, MS INC. )  
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**OPINION**

Representing the Parties:

For Appellant: Ryan R. Plewe  
For Respondent: Blake Cunningham, Specialist  
Bradley Coutinho, Attorney Supervisor

H. LE, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Ryan R. Plewe DDS, MS Inc. (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$2,921.08 for the 2021 tax year.

Appellant 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.) Office of Tax Appeals (OTA) Administrative Law Judge Huy “Mike” Le held an oral hearing for this matter electronically, on August 21, 2024. At the conclusion of the hearing, the record was closed and this matter was submitted for an opinion.

**ISSUE<sup>1</sup>**

Whether appellant has demonstrated a basis to abate the late payment penalty.

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<sup>1</sup> At the oral hearing, appellant also mentioned the estimated tax penalty of \$52.65. However, appellant has not raised a specific argument regarding the estimated tax penalty, and there is no general reasonable cause exception to the imposition of the estimated tax penalty. (*Appeal of Saltzman*, 2019-OTA-070P.) Thus, this Opinion will not further discuss the estimated tax penalty.

### FACTUAL FINDINGS

1. Appellant made untimely tax payments for the 2021 tax year.
2. Consequently, respondent imposed a late payment penalty of \$2,921.08.
3. Appellant paid the balance due and filed a refund claim seeking penalty abatement.
4. Respondent denied appellant's refund claim and this timely appeal followed.

### DISCUSSION

R&TC section 19132 provides that a late payment penalty shall be imposed when a taxpayer fails to pay the amount shown as due on the return on or before the due date of the return. Appellant does not dispute that it paid its 2021 tax liability late and that the penalty amount was properly computed. However, appellant requests that the penalty be abated due to reasonable cause because it relied on its accountant to determine the proper amount of taxes and when those taxes should be paid.

The late payment penalty may be abated if the failure to timely pay was due to reasonable cause and not willful neglect. (R&TC, § 19132(a)(1).) To establish reasonable cause for abating the penalty, taxpayers must show that the failure to timely pay occurred despite the exercise of ordinary business care and prudence; that is, the taxpayer must show it acted as an ordinarily intelligent and prudent businessperson would have under similar circumstances. (*Appeal of Moren*, 2019-OTA-176P.)

It is well settled that reliance on a tax return preparer generally does not constitute reasonable cause. (See *U.S. v. Boyle* (1985) 469 U.S. 241.) As a general principle, taxpayers have a non-delegable duty to ensure that a timely payment is made. (*Baccei v. U.S.* (9th Cir. 2011) 632 F.3d 1140, 1148-1149.)<sup>2</sup> This means that a taxpayer “cannot rely on its employee or agent to escape responsibility for the nonperformance of nondelegable tax duties.” (*Id.* at 1148, citing *Conklin Bros. of Santa Rosa, Inc. v. U.S.* (9th Cir. 1993) 986 F.2d 315, 319.) Although 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, where a late payment is attributable to a straightforward computation not involving any legal interpretation, a taxpayer may not “hide

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<sup>2</sup> Because the relevant language of R&TC section 19132 pertaining to the reasonable cause exception is patterned after Internal Revenue Code section 6651, the federal courts' interpretation of the reasonable cause standard is persuasive authority 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.)

behind an ‘expert’ for the failure to properly determine the tax that was due.” (*Appeal of Berolzheimer* (86-SBE-172) 1986 WL 22860; see also *Appeal of Summit Hosting LLC*, 2021-OTA-216P.)

Here, appellant provided a letter from its accountant that, for the most part, simply states that the accountant “disagree[s] with the penalties” and “request[s] to use the first-time penalty abatement waiver.” However, appellant has not proven that it relied on the advice of its accountant with respect to substantive matters of tax law. Thus, appellant has not established reasonable cause to abate the late payment penalty.

Appellant also requests a one-time abatement of the late payment penalty. R&TC section 19132.5 allows an “individual taxpayer” to request a one-time abatement of a timeliness penalty, which includes the late payment penalty, for taxable years beginning on or after January 1, 2022. As the 2021 taxable year is at issue here, this law is inapplicable, and we do not consider it further.

#### HOLDING

Appellant has not demonstrated a basis to abate the late payment penalty.

#### DISPOSITION

OTA sustains respondent’s denial of appellant’s claim for refund.

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Huy “Mike” Le

Administrative Law Judge

Date Issued: 9/10/2024