

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
ESTATE OF DONALD FRANK RIASKA) OTA Case No. 230713952
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OPINION

Representing the Parties:

For Appellant: James D. Lee, Administrator

For Respondent: Paige Chang, Attorney

For Office of Tax Appeals: Louis Ambrose, Attorney

E. PARKER, Hearing Officer: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Estate of Donald Frank Riaska (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$4,784, plus applicable interest, for the 2021 tax year.

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

ISSUES

1. Whether appellant has established reasonable cause to abate the late payment penalty.
2. Whether appellant has shown a legal basis for abatement of interest.

FACTUAL FINDINGS

1. Appellant made an extension payment of \$13,681 on April 15, 2022, for the 2021 tax year.
2. Appellant timely filed its California Fiduciary Income Tax Return (Form 541) on September 30, 2022, within the extension period, reporting a total tax of \$73,491. After applying an exemption credit of \$10 and extension payment of \$13,681, appellant

reported an amount due of \$59,800 (\$73,491 total tax - \$10 exemption credit - \$13,681 extension payment). Appellant made an untimely payment of \$59,800 on October 7, 2022.

3. FTB accepted the return as filed and issued a Notice of Tax Return Change - Revised Balance to assess the late payment penalty, plus interest and fees.
4. Appellant paid the balance due and filed a claim for refund of the penalty, plus applicable interest.
5. FTB denied the claim for refund and this timely appeal followed.
6. On appeal, appellant provided contemporaneous email communications as evidence that prior to the April 15, 2022 extension payment due date, appellant provided the tax preparer with the estimated gross income of the estate, which was not materially different from the amount reported on the 2021 tax year return filed on September 30, 2022. The emails provided by appellant further show that when appellant received the draft copy of the 2021 tax return in August 2022, it noted that the tax preparer had incorrectly reported the prior year distributions as current year distributions. The tax preparer apologized for the error in reported distributions and informed appellant that there would be additional tax due upon filing of the return.

DISCUSSION

Issue 1: Whether appellant has 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).) When FTB imposes a penalty, the law presumes that the penalty was imposed correctly, and the burden 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.)

A taxpayer's failure to timely 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.) Furthermore, a taxpayer's reliance on a tax professional to take care of the administrative act of filing a return or paying a tax due does not constitute reasonable cause. (See *U.S. v. Boyle* (1985) 469 U.S. 241, 250 (*Boyle*).)¹ To establish reasonable cause based on reliance on a tax professional, a taxpayer must show that it reasonably relied on a tax professional for substantive tax advice as to whether a tax liability exists 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. (*Appeal of Summit Hosting LLC*, 2021-OTA-216P, citing *Boyle, supra*, 469 U.S. 241.)

Here, appellant does not dispute that payment of the tax due was late or that FTB's computation of the late payment penalty is incorrect. Instead, appellant asserts there is reasonable cause to abate the late payment penalty because it exercised ordinary business care and prudence by relying on its tax preparer's estimate of the 2021 tax liability and intended the extension payment to be enough to cover the full tax liability. Appellant explains that the tax preparer made an input error in reported distributions that were identified in August 2022, which, when corrected, increased appellant's tax liability for the 2021 tax year. However, a review of the record does not show any facts or circumstances that would warrant a finding of reasonable cause for appellant. The emails between appellant and the tax preparer clearly establish that the tax preparer made an input error when calculating the extension payment. However, a simple computational, or input, error is not a matter of substantive tax law for purposes of relying on an expert to establish reasonable cause for abatement of the late payment penalty. (See *Appeal of Berolzheimer* (86-SBE-172) 1986 WL 22860.) Furthermore, nothing in the record shows that the appellant took any steps to verify the accuracy of the extension payment amount, other than fully relying on its tax preparer. Therefore, appellant has failed to show reasonable cause to abate the late payment penalty.

¹ The late filing and the late payment penalties generally deal with the same questions and weigh the same evidence for purposes of making reasonable cause determinations. (*Appeal of Triple Crown Baseball LLC*, 2019-OTA-025P.)

Appellant also asserts that at the time of reviewing and paying the extension payment, appellant's administrator was suffering from the effects of COVID-19, which was confirmed in May 2022. However, the contention of COVID-19 illness does not constitute reasonable cause in this particular appeal. While illness or other personal difficulties may constitute reasonable cause, taxpayers must present credible and competent evidence that the circumstances surrounding the difficulties prevented them from complying with the law. (*Appeal of Triple Crown Baseball LLC*, 2019-OTA-025P.) Here, appellant has not provided any evidence showing that the late tax payment was due to the administrator's illness or that appellant took appropriate steps to ensure the accuracy of the calculation of tax liability for the extension payment, despite the challenges posed by COVID-19. Therefore, appellant has failed to show reasonable cause to abate the late payment penalty.

Issue 2: Whether appellant has shown a legal basis for abatement of interest.

If any amount of tax is not paid by the due date, interest is required to be imposed from the due date until the date the taxes are paid. (R&TC, § 19101(a).) Interest is not a penalty but is compensation for the taxpayer's use of money that should have been paid to the state. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.) There is no reasonable cause exception to the imposition of interest. (*Ibid.*) To obtain relief from interest, a taxpayer must qualify under the waiver provisions of R&TC section 19104 (unreasonable error or delay by FTB in the performance of a ministerial or managerial act), 19112 (extreme financial hardship),² or 21012 (reasonable reliance on FTB's written advice).

On appeal, appellant only provides the same reasonable cause arguments discussed above. Therefore, there is no basis for interest abatement.

² The Office of Tax Appeals has no authority to review FTB's action under R&TC section 19112.

HOLDINGS

1. Appellant has not established reasonable cause to abate the late payment penalty.
2. Appellant has not shown a legal basis for abatement of interest.

DISPOSITION

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

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Erica Parker

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Erica Parker
Hearing Officer

We concur:

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Eddy Y. H. Lam

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Eddy Y.H. Lam
Administrative Law Judge

Signed by:

Greg Turner

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Greg Turner
Administrative Law Judge

Date Issued: 11/5/2024