

3. Respondent notified appellants of the balance owed for the 2020 taxable year and imposed a \$6,500.34 late-payment penalty plus applicable interest.²
4. Appellants paid the balance due and filed a claim for refund, arguing they had reasonable cause for the late payment of their taxes and seeking a refund of the late payment penalty and interest. There is no dispute regarding the mathematical computation of the late payment penalty.
5. Respondent denied appellants' refund claim.

DISCUSSION

Appellants contend that penalty abatement is warranted because they reasonably relied on their tax return preparer's advice that no tax was due. Appellants argue that the erroneous advice was based on a software error and was outside their control.

A penalty shall be imposed for the failure to timely pay the amount shown as due on the return. However, the penalty may be abated if a taxpayer shows that the failure to timely pay was due to "reasonable cause" and not willful neglect. (R&TC, § 19132(a).) In other words, the taxpayer must show that the failure to timely pay occurred despite the exercise of ordinary business care and prudence. (*Appeal of Scanlon*, 2018-OTA-075P.)

Although appellants understandably delegated the task of preparing the Return and computing the amount due to their tax return preparer, nevertheless, it is well established that reliance upon an agent in this regard does not constitute reasonable cause for abating the penalty because taxpayers have a nondelegable obligation to ensure that the taxes owed are timely paid. (*Appeal of Berolzheimer* (86-SBE-172) 1986 WL 22860.)

Instead, the exercise of ordinary business care and prudence required appellants to review the Return to verify that the estimated tax payments reported therein were accurate and actually paid. Had appellants performed a cursory review of the Return and their bank account(s), it would have revealed that the reported estimated tax payments were over twice the amount they had actually paid. Thus, appellants' failure to timely pay would have been prevented by the exercise of ordinary business care and prudence.


² Respondent also imposed an underpayment of estimated tax penalty which is not in dispute here.

HOLDING

Appellants have failed to establish reasonable cause for paying their taxes late.

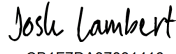
DISPOSITION

Respondent's action is sustained.

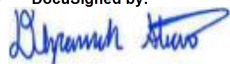
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Tommy Leung
Administrative Law Judge

We concur:

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Josh Lambert
Administrative Law Judge

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Josh Aldrich
Administrative Law Judge For

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