

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 230814035
C. SHORTLAND)
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OPINION

Representing the Parties:

For Appellant: Paul Sarlo, J.D., CPA

For Respondent: Vivian Ho, Attorney

For Office of Tax Appeals: Kyle Hall, Graduate Student Assistant

J. LAMBERT, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) 19324, C. Shortland (appellant) appeals an action by the respondent Franchise Tax Board (FTB) denying appellant's claim for refund of \$2,391.60 for the 2021 tax year.

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

ISSUE¹

Whether appellant established a basis to abate the late payment penalty.

FACTUAL FINDINGS

1. On October 3, 2022, appellant filed her California Nonresident or Part-Year Resident Income Tax Return (Form 540NR) for the 2021 tax year and remitted payment with the return.
2. On October 11, 2022, FTB issued a Notice of Tax Return Change – Revised Balance (notice) imposing a late payment penalty of \$2,394.80, plus applicable interest.
3. Appellant made a payment in satisfaction of the balance due and filed a claim for refund, which FTB denied.
4. This timely appeal followed.

¹ Appellant provides no argument or evidence as to a basis to abate interest. Therefore, this Opinion does not address interest.

5. On appeal, FTB explains that it recomputed the late payment penalty as \$2,391.60, as opposed to \$2,394.80, as indicated on its notice. FTB also explains that appellant underpaid the penalty and interest by \$5.10, but that FTB wrote off this amount and considers the balance satisfied.²

DISCUSSION

R&TC section 19132(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 tax. Generally, the date prescribed for the payment of tax is the due date of the return (without regard to extensions of time for filing). (R&TC, § 19001.) When FTB imposes a penalty, the law presumes that the penalty was imposed correctly. (*Appeal of Red Vision Systems, Inc.*, 2023-OTA-561P.) 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.

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, 250-251 (*Boyle*); see also *Appeal of Summit Hosting LLC*, 2021-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*.)

Appellant asserts that she is an Australian citizen and resident, and did not render services physically in California or stay in the U.S. during 2021. Appellant asserts that she received residual income from California-based projects that she participated in during 2019 and 2020. Appellant contends that she was issued the income in December 2021, but due to bank processing, the funds did not arrive in her bank account until January 2022.³ Appellant states that she is unfamiliar with U.S. tax rules and procedures, and believed the income would be

² FTB denied appellant's claim for refund for the late payment penalty of \$2,391.60, plus interest. Therefore, the \$2,391.60 amount will be addressed in this Opinion.

³ On appeal, neither party disputes that the wages are properly included in taxable income for the 2021 tax year. While appellant asserts that she was not in receipt of the income until 2022, she provides no documentation in support of that assertion. Additionally, appellant reported this income on her 2021 Form 540NR filed on October 3, 2022, and it appears appellant concedes the income was properly included in taxable income for the 2021 tax year.

received and reported in 2022, instead of 2021. Appellant asserts that she maintained periodic communication with her management agent, but that she was not informed by her agent of the 2021 Form W-2 until July or August of 2022. Appellant states that, upon discovering she had California taxable income, she took steps to rectify the situation and filed her 2021 income tax return in October 2022. Appellant argues there is reasonable cause for the late payment due to her unfamiliarity with the tax law and the failure to receive timely information from her agent.

Appellant does not assert that she received or relied on erroneous advice from a tax advisor, but rather that she was not informed by her management agent until July or August 2022 that she received a 2021 Form W-2 reporting residual payments. Therefore, appellant has not shown that she relied on any substantive advice, or that advice was received by a tax professional. Additionally, appellant did not exercise ordinary business care and prudence when she failed to acquaint herself with California tax law requirements. (*Appeal of Porreca*, 2018-OTA-095P.) Ignorance of the law is not reasonable cause for failure to comply with statutory requirements. (*Ibid.*)

Lastly, appellant requests a one-time late payment penalty abatement allowed under R&TC section 19132.5. However, the one-time late payment penalty abatement is only available for tax filings beginning on or after January 1, 2022. (R&TC, § 19132.5(f).) Appellant's appeal is for the 2021 tax year; therefore, the one-time abatement does not apply.

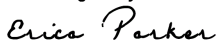
HOLDING


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


DISPOSITION

FTB's action is sustained.

We concur:

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Erica Parker
Hearing Officer

Signed by:

CB1F7DA37831416...
Josh Lambert
Administrative Law Judge

Signed by:

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Seth Elsom
Hearing Officer

Date Issued: 11/20/2024