



- “Planned total value of approximately 1.4M consisting of cash, stocks, and funds, with approx 82k in tax for the distribution.”
2. On March 25, 2022, A. Kwan forwarded to G. Meguerian an email he received from the LLC’s CPA. The LLC’s CPA email included the following statement: “The total of the allocated gain amounts is \$[redacted,] which is the gain [A. Kwan] must recognize on the redemption of his interest in the LLC.” In his email to G. Meguerian, A. Kwan also attached the Schedule K-1 (K-1) prepared by the LLC’s CPA. That same day, G. Meguerian acknowledged receipt of A. Kwan’s email and indicated that he would review the gains assessment.
  3. On October 15, 2022, appellants filed a joint California Resident Income Tax Return (Return) for the 2021 tax year, reporting a tax due of \$79,736. Appellants also remitted payment of their reported tax liability on the same date.
  4. FTB accepted appellants’ Return but issued a State Income Tax Balance Due Notice (Notice) imposing, as relevant here, a late payment penalty.
  5. On November 11, 2022, K. Swanston emailed G. Meguerian inquiring about the Notice.
  6. Appellants paid the late payment penalty and filed a claim for refund.
  7. FTB denied appellants’ claim for refund. In response, G. Meguerian sent a letter to FTB indicating that he assumed the LLC had withheld and paid the taxes resulting from the aforementioned distribution. G. Meguerian also stated that they were not “in a position to estimate balances owed” by April 15, 2022 (i.e., the date payment was due for the 2021 tax year).
  8. This timely appeal followed.

### DISCUSSION

R&TC section 19132 imposes a late payment penalty when taxpayers fail to pay the amount shown as tax on the return by the date prescribed for the payment. 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.) For the 2021 tax year, the original filing and payment due date was April 15, 2022 (see R&TC, § 18566), but appellants did not pay their tax liability until October 15, 2022. Therefore, FTB properly imposed the late payment penalty.

A late payment penalty may be abated if the taxpayers can show that the failure to make a timely payment of tax was due to reasonable cause and not due to willful neglect. (R&TC, § 19132(a)(1).) To establish reasonable cause for the late payment of tax, the taxpayers must show, by a preponderance of the evidence, 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 Rougeau*, 2021-OTA-335P.) Reasonable cause may also exist if taxpayers reasonably relied on the substantive tax advice of a tax professional. (*Appeal of Summit Hosting LLC*, 2021-OTA-216P, citing *U.S. v. Boyle* (1985) 469 U.S. 241, 251.) By contrast, reliance on an expert cannot function as a substitute for compliance with an unambiguous statute. (*Ibid.*) Ignorance of the law is not reasonable cause for failure to comply with statutory requirements. (*Appeal of Porreca*, 2018-OTA-095P.)

Appellants contend that their late payment of tax was due to reasonable cause because they relied on a tax professional (G. Meguerian) who believed the LLC withheld taxes on the distribution and/or did not inform appellants that their tax payment was due on April 15, 2022. In support of this contention, appellants rely on G. Meguerian's letter to FTB in which he asserts that he was unaware the taxes were not withheld by the LLC and that he was unable to estimate appellants' tax liability prior to the April 15, 2022 deadline.

However, the March 25, 2022 email string shows that A. Kwan sent the K-1 to G. Meguerian and that G. Meguerian acknowledged receipt thereof that same day. Consequently, G. Meguerian was in a position, prior to the April 15, 2022 payment deadline, to confirm whether the LLC had withheld taxes from the distribution and to advise appellants that a payment would be due. Moreover, A. Kwan informed G. Meguerian on December 31, 2021, of the estimated value of the distribution and tax amount. Therefore, even without the K-1, G. Meguerian would have been able to estimate the amount of appellants' tax liability prior to the April 15, 2022 payment deadline.<sup>2</sup>

That aside, there is no evidence in the record indicating that G. Meguerian advised appellants on or before April 15, 2022, that there was no liability with respect to the distribution (or that no payment was due on April 15, 2022).<sup>3</sup> Appellants have not provided any of their correspondence with G. Meguerian between March 25, 2022 (when they provided him with the K-1), and November 11, 2022 (when they emailed him regarding the Notice). Furthermore, the December 31, 2021 email and the March 25, 2022 email string indicate that appellants had some notice that taxes would be due or that a gain would need to be recognized. Emails of this

---

<sup>2</sup> Notably, A. Kwan's estimation was more than the amount that appellants reported as their federal adjusted gross income for the 2021 tax year, so a calculation using the December 31, 2021 estimation would have exceeded appellants' ultimate tax liability for that year.

<sup>3</sup> Without such evidence, OTA does not analyze whether appellants have made the other required showings when taxpayers claim reliance on a tax professional (i.e., that the tax professional has competency in the subject tax law, and the advice given by that tax professional was based on the taxpayers' full disclosure of relevant facts and documents). (*Appeal of Summit Hosting LLC*, *supra*.)

nature would prompt taxpayers exercising ordinary business care and prudence to inquire about the existence of a tax liability. At the very least, OTA would expect diligent and prudent taxpayers to inquire with their hired tax professional prior to the April 15th payment deadline to confirm that no payment was due. Without evidence showing that appellants made such inquiries and that their tax professional in turn advised them that no liability existed, appellants cannot meet their burden in showing that they exercised diligence and prudence or reasonably relied on advice from G. Meguerian.


Appellants further argue that reasonable cause to abate the penalty exists because the distribution was a “once in a lifetime event” and created a “unique and unusual” circumstance, and they were not familiar with “how [the] tax liability attached to distribution.” However unique, unusual, or rare the distribution was, it does not excuse appellants’ late payment under the circumstances presented here. Appellants were in receipt of the K-1 prior to the April 15, 2022 payment deadline, and thus, a timely payment could and should have been made. For the same reasons stated above, appellants have not shown that they exercised ordinary business care and prudence in their efforts to timely pay the tax. (See *Appeal of Summit Hosting LLC, supra.*) Moreover, ignorance of the law is not reasonable cause for failure to comply with statutory requirements. (*Appeal of Porreca, supra.*) Based on the foregoing, OTA finds that appellants have not established reasonable cause to abate the late payment penalty.

HOLDING


Appellants have not established reasonable cause to abate the late payment penalty.


DISPOSITION

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

Signed by:  
  
\_\_\_\_\_  
F595B34810D0470...  
Lauren Katagihara  
Administrative Law Judge

We concur:

Signed by:  
  
\_\_\_\_\_  
CB1F7DA37831418...  
Josh Lambert  
Administrative Law Judge

DocuSigned by:  
  
\_\_\_\_\_  
1A9B32E788A0AC7...  
Michael F. Geary  
Administrative Law Judge

Date Issued: 3/21/2025