

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
MARGARET L. HARRIS ADMINISTRATIVE) OTA Case No. 230513362
TRUST)
_____)

OPINION

Representing the Parties:

For Appellant: Carolyn Amster, CPA

For Respondent: Alisa L. Pinarbasi, Attorney

For Office of Tax Appeals: Louis Ambrose, Attorney

A. VASSIGH, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Margaret L. Harris Administrative Trust (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$19,744.58 for the 2021 tax year.

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

ISSUE

Whether appellant has established reasonable cause for the late payment of tax.

FACTUAL FINDINGS

1. Appellant, an irrevocable trust, was the sole beneficiary of the Harris Family Trust (the Bypass Trust).
2. Prior to 2021, the Bypass Trust had not owed tax nor had a filing requirement. On November 21, 2021, the Bypass Trust sold its sole asset, a residential home (the property), at a gain.
3. The sale of the property created a filing requirement for the Bypass Trust and reportable gain for appellant as the Bypass Trust’s beneficiary.

4. Appellant's trustee hired an accounting firm to prepare appellant's return. The trustee did not provide the accounting firm with a copy of the Bypass Trust until after the April 15, 2022 payment due date.
5. In its briefing for this appeal, appellant states that "[a] clerical error occurred and the Bypass Trust return was not recorded at the CPA's office as a separate project due on April 15th."
6. Appellant filed its 2021 California Fiduciary Income Tax Return (Form 541) on July 18, 2022, within the automatic extension period.
7. Appellant did not pay the amount of tax due reported on its return by the April 15, 2022 due date, and FTB thereafter sent a Notice of Tax Return Change - Revised Balance (Notice). The Notice imposed a late payment penalty of \$19,744.58, plus interest.
8. On August 15, 2022, appellant made a partial payment towards the total amount due. Because appellant failed to pay the full balance due amount, FTB issued an Income Tax Due Notice on October 19, 2022, reflecting a balance of \$19,608.74, which appellant paid on that same date.
9. Appellant filed a claim for refund of the late payment penalty, claiming reasonable cause for the failure to make timely payment. FTB denied appellant's claim for refund.
10. This timely appeal followed.

DISCUSSION

R&TC section 19001 provides that the personal income tax "shall be paid at the time and place fixed for filing the return (determined without regard to any extension of time for filing the return)." 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. Here, it is undisputed that appellant failed to make timely payment of the tax, and appellant does not dispute that the penalty was correctly calculated in accordance with the statute. Therefore, the penalty was properly imposed.

The taxpayer has the burden of proof to show that reasonable cause exists to support abatement of the late payment penalty. (*Appeal of Triple Crown Baseball LLC*, 2019-OTA-025P.) 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. (*Ibid.*) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof. (*Appeal of Scanlon*, 2018-OTA-075P.)

Appellant explains that the Bypass Trust was not required to file a return in a prior year, and that the trustee was unfamiliar with the filing requirements for trusts. Additionally, appellant states that the trustee was unaware that the sale of the property resulted in a tax liability for appellant. Appellant argues that these circumstances constitute reasonable cause for the failure to make timely payment of the tax.

A taxpayer who fails to acquaint themselves with the requirements of California tax law has not exercised ordinary business care and prudence. (*Appeal of Summit Hosting LLC*, 2021-OTA-216P.) The trustee's lack of familiarity with the applicable tax laws does not establish reasonable cause for penalty abatement. Moreover, appellant's appeal states that the trustee consulted with a CPA, who "explained that the trust would need to file a return to report gain from the sale of its share of the house in the year it was sold."

Appellant suggests that the time involved in finding records delayed the filing of the Bypass Trust return by the accounting firm until after the April 15, 2022 deadline, which thereby delayed the payment of appellant's 2021 tax liability. However, difficulty in obtaining information does not constitute reasonable cause. (*Appeal of Xie*, 2018-OTA-076P.) Appellant also asserts that the accounting firm was unaware that appellant was the sole beneficiary of the Bypass Trust and that the trustee believed she had provided the firm with all necessary information to prepare returns for the Bypass Trust.¹ Appellant's reliance on the accounting firm to ensure timely payment of the tax does not relieve appellant of its duty to comply with all statutory requirements. (*Appeal of Fisher, supra.*)

¹ Appellant also argues that an estate planner had incorrectly advised the trustee that the Bypass Trust would never have a filing requirement. However, the filing of the Bypass Trust return is not at issue here and is irrelevant to a determination of reasonable cause for untimely payment of appellant's tax liability. To the extent that the Bypass Trust's information was not relayed timely to the accounting firm due to a clerical error, clerical errors do not constitute reasonable cause. (See *Appeal of Fisher*, 2022-OTA-337P.)

HOLDING

Appellant has not established reasonable cause for the late payment of tax.

DISPOSITION

FTB's denial of appellant's claim for refund is sustained.

DocuSigned by:
Amanda Vassigh
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Amanda Vassigh
Administrative Law Judge

We concur:

DocuSigned by:
Tommy Leung
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Tommy Leung
Administrative Law Judge

DocuSigned by:
John O Johnson
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John O. Johnson
Administrative Law Judge

Date Issued: 5/14/2025