

3. FTB accepted the return as filed.
4. Appellants filed a claim for refund of the late payment penalty and interest based on reasonable cause.
5. FTB denied the claim for refund and this timely appeal followed.

DISCUSSION

Issue 1: Whether appellants have established reasonable cause to abate the late payment penalty.

R&TC section 19132 imposes a late payment penalty when a taxpayer fails to pay the amount shown as due on a return by the date prescribed for the payment of the tax. Generally, the date prescribed for the payment of tax is the due date of the return, without regard to any extension of time for filing the return. (R&TC, § 19001.) For the 2020 tax year, FTB postponed the filing and payment due date from April 15, 2021, to May 17, 2021.¹ The late payment penalty was properly imposed because appellants did not satisfy their 2020 tax liability until October 14, 2021.

The late payment penalty may be abated if the taxpayer establishes that the failure to make a timely payment was due to reasonable cause and not willful neglect. (R&TC, § 19132(a)(1).) To establish reasonable cause, a 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.) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof. (*Appeal of Moren*, 2019-OTA-176P.)

To establish reasonable cause based on reliance on a tax professional, a taxpayer must show that he or she reasonably relied on the tax professional for substantive tax advice. (*Appeal of Summit Hosting LLC*, 2020-OTA-216P, citing *U.S. v. Boyle* (1985) 469 U.S. 241, 251.) In addition, the taxpayer must show that he or she relied on a tax professional with competency in the subject tax law, and the advice given by that tax professional was based on the taxpayer's full disclosure of relevant facts and documents. (*Ibid.*) A taxpayer's reliance on an expert cannot serve as a substitute for compliance with an unambiguous statute. (*Ibid.*)

¹ See COVID-19 Extension, <https://www.ftb.ca.gov/about-ftb/newsroom/2020-tax-year-extension-to-file-and-pay-individual.html>.

Here, appellants do not argue the late payment penalty was improperly imposed or computed incorrectly. Rather, appellants contend that they had reasonable cause for failing to timely pay their 2020 tax liability because (1) they relied on their tax professional's advice, (2) they experienced difficulty in obtaining sound tax advice because of the COVID-19 pandemic, and (3) they were caring for an ill family member that passed away in December 2020. Due to these circumstances, appellants assert they were "unable to spend sufficient time researching and validating [their] tax due." Appellants further explain that their tax professional erroneously excluded the proceeds from the sale of restricted stock units (RSU) that qualified as qualified small business stock (QSBS) from California taxable income, resulting in inaccurate estimated tax computations.

In support of their contention, appellants provide copies of two emails from their tax professional. The first email, dated December 15, 2020, states the "QSBS component (amount) was not exactly clear, but in the interest of time we are releasing the projections and estimate." The second email, dated December 16, 2020, indicates the tax professional provided appellant with income tax projections with and without the QSBS income included. Appellants also provide a Summary Report dated December 16, 2020, which provides a projection of appellants' net federal and state tax due for 2020 based on appellants' income without the QSBS income.²

In order to establish reliance on a tax professional, appellants must first show that they reasonably relied on a tax professional's advice related to a substantive tax matter. Here, the evidence in the record shows the tax professional fully disclosed that the treatment of the QSBS income was "not exactly clear" and provided alternative tax computations. Appellants chose to rely on the computation that excluded the QSBS income. Appellants have not shown that their reliance on the advice was reasonable under these circumstances. An ordinarily intelligent and prudent businessperson would have taken steps to ensure the accuracy of the estimated tax obligation after the tax professional informed him or her that the tax treatment of the QSBS income was unclear. Yet, appellants provide no explanation of what steps they took or what questions they asked to ensure that they paid the correct amount of tax before the due date. Appellants have not established reasonable reliance on a tax professional for substantive tax advice.³

² The projection of income tax with the QSBS income was not provided on appeal. OTA notes the projection that does not include the QSBS indicates appellants had a state tax balance due.

Appellants' statements that they experienced difficulties in obtaining sound tax advice because of the COVID-19 pandemic and that they were caring for an ill family member fail to address how these difficulties prevented them from meeting their tax obligation. Appellants provide no argument or evidence to show that they acted as an ordinarily intelligent and prudent businessperson would have acted in similar circumstances. Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof. (*Appeal of Moren, supra.*) As such, appellants have not established reasonable cause to abate the late payment penalty.

Issue 2: Whether appellants have 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 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),⁴ or 21012 (reasonable reliance on FTB's written advice).

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

³ Since OTA does not find appellants reasonably relied on a tax professional for substantive tax advice, OTA need not address whether the person relied on was competent in the subject tax law, or whether the advice was based on appellants' full disclosure of all relevant facts and documents.

⁴ OTA has no authority to review FTB's action under R&TC section 19112.

HOLDINGS

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


DISPOSITION

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


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 Erica Parker
 Hearing Officer

We concur:
 Signed by:

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 Natasha Ralston
 Administrative Law Judge

Signed by:

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 Seth Elsom
 Hearing Officer

Date Issued: 5/14/2025