

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of: )  
J. COOK AND ) OTA Case No. 230613466  
K. COOK )  
\_\_\_\_\_ )

**OPINION**

Representing the Parties:

For Appellants: Hyein Kim, TAAP Student Representative<sup>1</sup>  
For Respondent: Eric R. Brown, Attorney  
Bradley J. Coutinho, Attorney

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. Cook and K. Cook (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants' claim for refund of \$6,022.71<sup>2</sup> for the 2021 taxable year.

Office of Tax Appeals (OTA) Panel Members Teresa A. Stanley, Erica Parker, and Natasha Ralston held a virtual oral hearing for this matter on March 19, 2025. At the conclusion of the hearing, the record was closed, and this matter was submitted for an opinion pursuant to California Code of Regulations, title 18, section 30209(b).

**ISSUE**<sup>3</sup>

Have appellants established reasonable cause to abate the late-payment penalty?

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<sup>1</sup> Appellants filed their original appeal. Tax Appeals Assistance Program (TAAP) student representative Bessie Li filed appellants' reply brief. TAAP student representative Sean Driscoll filed appellants' second and third reply briefs. TAAP student representative Hyein Kim represented appellants at the oral hearing.

<sup>2</sup> Appellants' claim for refund includes a late-payment penalty of \$5,018.64, and applicable interest of \$1,004.07.

<sup>3</sup> Appellants make no arguments regarding interest. Accordingly, OTA does not separately address interest in this Opinion.

FACTUAL FINDINGS

1. Appellants filed a timely 2021 California Resident Income Tax Return on September 19, 2022, reporting tax withholdings of \$22,620 and tax due of \$62,733, which appellants paid on October 13, 2022.
2. Appellants made an estimated tax payment to the IRS of \$225,000 on January 10, 2022. The IRS issued appellants a refund of \$85,348 on October 13, 2022.
3. Appellants used an accounting firm, Castro & Co., to advise them on tax matters and for assistance with tax return preparation. Appellants used this firm to file amended returns for 2015, 2016, and 2017 and to file original returns for 2018, 2019, and 2020. According to J. Cook, appellants had no issues or adjustments with the federal or state returns for those six taxable years.
4. A Castro & Co. CPA, K. Hilliard, advised appellants during preparation of their taxable year 2021 federal and state tax returns. K. Hilliard's biography states that she played a lead role in the preparation of tax returns, audited financial statements, and international corporate audits for Castro & Co. Previously, K. Hilliard worked in international taxation preparing tax returns, handling tax audits, and drafting transfer pricing policies and reports.
5. Castro & Co. adopted SmartVault for 2021, which allowed clients to "safely, securely, and easily" upload their tax documents. Appellants uploaded J. Cook's 2021 Form W-2 Wage and Earnings statement; five Forms 1099, including a 1099-B, Proceeds from Broker or Barter Exchange Transactions, from Shareworks, which reported the gross proceeds and cost basis on the sale of Junio Corporation stock; information relating to the exercise of unspecified stock options; and income and deductions related to real properties located in Australia to SmartVault between February 2, 2022, and April 25, 2022.
6. J. Cook testified that he discussed appellants' California filing and payment obligations with K. Hilliard prior to the due date for payment of April 15, 2022, and that K. Hilliard assured him appellants had made sufficient estimated tax payments to satisfy both federal and state taxes. In an email to J. Cook dated April 14, 2022, K. Hilliard advised that "based on the information currently in SmartVault [which included the large capital gain shown on the Shareworks Form 1099-B], we show you have a zero (\$) amount due in California."
7. After appellants' paid their balance on October 13, 2022, FTB imposed a late-payment penalty of \$5,018.64, plus applicable interest, which appellants paid on March 16, 2023.

8. Appellants filed a claim for refund of the penalty plus interest based on reasonable cause.
9. FTB denied appellants' claim for refund, and this timely appeal followed.

### DISCUSSION

R&TC section 19132 imposes a penalty when taxpayers fail to pay the tax shown on a return by the date prescribed for the payment of the tax. 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.) The due date for appellants' payment of tax for the 2021 taxable year was April 15, 2022. (R&TC, §§ 18566, 19001.) While FTB allows an automatic six-month extension to file a return if the return is filed within six months of the original due date, an extension of time to file the return is not an extension of time to pay. (R&TC, § 18567; Cal. Code Regs., tit. 18, § 18567.) FTB imposed the late-payment penalty because appellants did not remit full payment of their tax liability until October 13, 2022. The penalty is presumed correct unless the taxpayers can demonstrate that the late payment resulted from reasonable cause and not willful neglect. (R&TC, § 19132; *Appeal of Triple Crown Baseball LLC*, 2019-OTA-025P.)

To establish reasonable cause, taxpayers must demonstrate that the failure to timely pay the proper amount of tax occurred despite the exercise of ordinary business care and prudence. (*Appeal of Triple Crown Baseball LLC*, *supra*.) Taxpayers bear the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Appeal of Moren*, 2019-OTA-176P.) The applicable standard of proof is by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(b).)

Appellants do not contest that the late-payment penalty was properly imposed or computed. Thus, the only issue is whether appellants have demonstrated reasonable cause for their failure to timely pay the required taxes in full. Appellants assert that reasonable cause exists to abate the late-payment penalty because they relied on the advice of a tax professional who informed them that they did not owe tax to California more than they had already paid.

It is well settled that taxpayers' failure to make a timely payment or file a return is not excused by the taxpayer's reliance on a tax preparer because a taxpayer has a personal, non-delegable obligation to meet statutory deadlines. (See *U.S. v. Boyle* (1985) 469 U.S. 241 (*Boyle*); see also *Appeal of Rougeau*, 2021-OTA-335P [applying *Boyle*, a case involving a late filing penalty, to the late-payment penalty].) To establish that reasonable cause exists under *Boyle*, taxpayers must show they reasonably relied on a tax professional for substantive tax advice as to whether a tax liability exists and that the following conditions are met: (1) the

person relied on by the taxpayer is a tax professional with competency in the subject tax law; and (2) the tax professional's advice is based on the taxpayer's full disclosure of relevant facts and documents. (*Boyle, supra*, at p. 251.) By contrast, reliance on an expert cannot function as a substitute for compliance with an unambiguous statute. (*Ibid.*)

Appellants assert that they relied on a tax adviser regarding the amount of tax they should pay to California, not on when the payment due date fell. Appellants contend that: (1) they paid an amount via tax withholdings that they believed exceeded their California tax liability; (2) they discussed the matter with their advisor from Castro & Co. prior to the payment due date to ensure they did not need to make any additional payment by the April 15, 2022 due date; (3) Castro & Co. had an office in California and had federal, state, and international tax law experience; (4) Castro & Co. had experience with Australian expatriates; and (5) they had relied on the tax advisor to file amended returns for 2015, 2016, and 2017 (both federal and California) and to prepare and file original returns for 2018, 2019, and 2020 (both federal and California) without a problem so they had no reason to second-guess the advice of their tax professional.<sup>4</sup>

FTB contends that this appeal is like the situation in *Appeal of Berolzheimer* (86-SBE-172) 1986 WL 22860 (*Berolzheimer*) as appellants' adviser here incorrectly calculated the amount of tax appellants owed to California. Appellants contend that *Berolzheimer* is distinguishable from this case in that *Berolzheimer's* tax adviser expressly admitted that the improper advice was due to a calculation error made while using a new software system. The Board of Equalization (BOE) found there was no legal issue as to the fact that gain is realized on the sale of capital assets nor was there a question regarding the holding period; therefore, only a simple computation remained, and appellants could not "hide behind an 'expert' for the failure to properly determine the tax that was due." Furthermore, in *Berolzheimer*, BOE found that there was no basis in the record for concluding that the New York law firm retained by appellants had expertise in California tax law and therefore declined to hold, as a matter of law, that relying on an out-of-state law firm constituted reasonable cause for failing to comply with California's tax laws.

Appellants established the person upon whom they relied for advice, K. Hilliard, was a tax professional with competency in the subject tax law. K. Hilliard, a CPA, and her employer, Castro & Co., held themselves out as experts in international, federal, and California state tax

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<sup>4</sup> Appellants also claim that K. Hilliard advised them that any overpayment to the IRS would result in an offset to unpaid California tax. During briefing and at the hearing, appellants characterized this as a "global offset." OTA expresses no opinion on whether that advice, if expressly given, would constitute substantive advice under the law.

law. The firm had more than one location, one of which was in California, and had prepared and filed several tax returns for appellants in California without any resulting adjustments or penalties. Appellants have also established that they fully disclosed all relevant facts and documents to Castro & Co., which K. Hilliard reviewed, and based on the documents uploaded by appellants, expressly advised them that they owed no tax to California (beyond what was already paid via withholdings).

J. Cook testified that appellants switched tax preparers on July 26, 2022, and their new tax advisor advised them, at least by September 19, 2022, that they owed a tax balance of \$62,733. However, appellants failed to pay that tax balance until October 13, 2022. J. Cook testified that appellants could not pay the balance until they received a refund from the IRS. Inability to pay the tax due to financial hardship may, under certain circumstances, establish reasonable cause to abate a late-payment penalty. (*Appeal of Triple Crown Baseball, LLC.*) However, appellants have not submitted evidence showing that they had no other way to pay the tax liability, or any part of it, other than to await their IRS refund, and there is no evidence in OTA's record that appellants attempted to set up a payment plan with FTB. Thus, appellants have failed to establish reasonable cause existed until the actual date of their late payment.


Because reasonable cause must exist until payment is remitted (*Appeal of Moren, supra*), it is unnecessary for OTA to determine whether appellants reasonably relied on their tax preparer for substantive tax advice regarding how much tax appellants should pay to California by the April 15, 2022 payment due date. Accordingly, OTA finds that appellants have not established reasonable cause to abate the late-payment penalty.

HOLDING

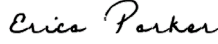
Appellants have not established reasonable cause to abate the late-payment penalty.


DISPOSITION

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

DocuSigned by:  
  
Teresa A. Stanley  
Administrative Law Judge

We concur:

DocuSigned by:  
  
Erica Parker  
Hearing Officer

Signed by:  
  
Natasha Ralston  
Administrative Law Judge

Date Issued: 5/21/2025