

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
FRANK E. FEDER 1996 TRUST) OTA Case No. 230713919
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OPINION

Representing the Parties:

For Appellant: Arash Kahen, Attorney
Michael Broida, CPA

For Respondent: John Ly, Attorney
Jaclyn Zumaeta, Deputy Chief Counsel

J. JOHNSON, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, appellant Frank E. Feder 1996 Trust appeals an action by respondent Franchise Tax Board denying appellant’s claim for refund of \$38,838.80 for the 2021 tax year.¹

The Office of Tax Appeals Panel Members John O. Johnson, Kenneth Gast, and Teresa A. Stanley held an oral hearing for this matter in Cerritos, California on June 18, 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

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

FACTUAL FINDINGS

1. On September 15, 2021, appellant made an estimated tax payment of \$392,000 to respondent for the 2021 tax year.

¹ The claim for refund amount is comprised of a \$30,301.08 late payment penalty and \$8,537.72 in accrued interest. At the hearing, appellant conceded the interest amount, leaving only the late payment penalty amount at issue on appeal.

2. On January 15, 2022, appellant made an estimated tax payment of \$168,000 to respondent for the 2021 tax year. On or around that same date, appellant made a \$400,000 estimated tax payment to the IRS.
3. Appellant filed its California tax return on September 30, 2022, within the automatic extension for filing period. The return listed a total tax of \$867,025 and total payments of \$792,000. Appellant submitted a payment of \$77,462 with the return to satisfy the amount appellant calculated as outstanding when it submitted the return.
4. In February 2023, respondent issued a Notice of Tax Return Change that reduced the estimated tax payments to \$560,000 and listed additional tax due of \$229,563, plus the late payment penalty at issue and interest.
5. Thereafter, appellant requested abatement of the penalty, paid the remaining amount due, and submitted a claim for refund of the penalty and interest.
6. Respondent denied appellant's claim for refund, and this timely appeal followed.

DISCUSSION

R&TC section 19132 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 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.) Here, appellant was required to pay the full amount of tax due for the 2021 tax year by April 15, 2022, but underpaid the tax due as of that date.² (R&TC, § 18566.) Accordingly, the late payment penalty is properly imposed and calculated based on the portion of tax that was paid late.

The late payment penalty will be abated if a taxpayer shows that the failure to make a timely payment of tax was due to reasonable cause and was not due to willful neglect.³ (R&TC, § 19132(a).) To establish reasonable cause for a late payment of tax, taxpayers must show that the failure to make a timely payment occurred despite the exercise of ordinary business care and prudence. (*Appeal of Scanlon*, 2018-OTA-075P.) The taxpayer bears the burden of

² Appellant had a total tax liability for the 2021 tax year of \$867,025. Appellant made estimated tax payments of \$560,000, which constituted timely payments. The remainder of the tax owed was satisfied by multiple payments made between September 2022 and April 2023.

³ Appellant asserts that the late payment was not due to willful neglect, which is defined as a conscious, intentional failure or reckless indifference. (See *U.S. v. Boyle* (1985) 469 U.S. 241, 245.) To support abatement of the late payment penalty, appellant needs to show not only a lack of willful neglect, but also that reasonable cause existed for the late payment. (*Appeal of Friedman*, 2018-OTA-077P.) As this matter is resolved under the analysis for the latter of the two, willful neglect need not be discussed further herein.

proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Appeal of Triple Crown Baseball LLC*, 2019-OTA-025P.) The failure to timely remit a tax payment due to an oversight does not, by itself, constitute reasonable cause. (*Appeal of Friedman*, 2018-OTA-077P.)

Appellant's tax preparer testified at the hearing that the underpayment was a result of "a unique situation where a clerical error occurred," and asserted that it was a "third-tier clerical error," having been an error on the part of a clerk that worked for the CPA who prepared the California tax return for appellant. Appellant's tax preparer elaborated that the clerk "mistakenly input \$400,000 for the fourth quarter [estimated tax payment] paid to [respondent] instead of the \$168,000 which was actually paid."⁴

Appellant asserts that it acted reasonably in relying on a professional to prepare its return, and that the error that caused the late payment was beyond appellant's control, arguing that the error was not due to willful neglect or negligence by appellant. Appellant adds that it was not a complex tax situation that gave rise to the late payment, but rather a clerical error. Appellant contends that precedent stating that reliance on a tax preparer to meet statutory deadlines does not support a finding of reasonable cause for a timeliness penalty, such as *U.S. v. Boyle* (1985) 469 U.S. 241, and *Appeal of Summit Hosting*, 2021-OTA-216P, are distinguishable because the reason behind the payments being late was due to "an unforeseeable clerical error rather than a lapse in fulfilling tax obligations."⁵

However, case law clearly provides that a clerical error such as an oversight does not, by itself, constitute reasonable cause. (*Appeal of Friedman, supra*; *Appeal of Risser* (84-SBE-044) 1984 WL 16123.) The fact that the clerical error was committed by appellant's tax preparer does not change this fact, as simple reliance on a tax preparer to meet statutory deadlines also does not meet the reasonable cause standard. (*U.S. v. Boyle, supra*.) Here, appellant's return overreported its estimated tax payments by \$232,000, an overstatement of approximately 40 percent, and there is no evidence showing appellant made any effort to verify the accuracy of the reported payments prior to filing the return. The exercise of ordinary

⁴ Appellant clarified at the hearing that the \$400,000 amount incorrectly included in the California estimated tax payments reflected the fourth quarter estimated tax amount paid to the IRS. There is no assertion that the \$400,000 payment was instead intended to have been paid to California rather than the IRS.

⁵ Appellant also asserts that cases involving the late filing of a return, such as *U.S. v. Boyle, supra*, are distinguishable since the facts here involve late payments rather than a late filing of a return. However, it is well settled that case law analyzing the question of reasonable cause as applied to the late filing penalty is persuasive authority for determining whether reasonable cause existed for the failure to timely pay the tax. (*Appeal of Triple Crown, supra*.)

business care and prudence in filing the return would include confirming the amount reported on the return as having been paid. Accordingly, appellant has not shown reasonable cause existed for the late payment of tax that resulted from an unchecked clerical error.

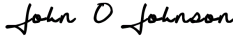
Appellant states that it promptly corrected the error once discovered, in an effort to distinguish these facts from precedent like *Appeal of Triple Crown Baseball, supra*. However, the question of whether reasonable cause exists for the late payment of tax is focused on the amount unpaid as of the due date for payment. The fact that appellant paid the amount outstanding within a month or two of being notified by respondent of the underpayment helped to stop the accrual of the penalty amount, but it does not support appellant’s position as to whether there was reasonable cause for the late payment in the first place.⁶ (See *Appeal of Friedman, supra*.)

HOLDING

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

DISPOSITION

Respondent’s action denying appellant’s claim for refund is sustained.

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 John O. Johnson
 Administrative Law Judge

We concur:

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 Kenneth Gast
 Administrative Law Judge

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 Teresa A. Stanley
 Administrative Law Judge

Date Issued: 9/11/2025

⁶ Furthermore, appellant’s arguments on appeal are solely focused on the clerical error at the time the return was prepared and filed, but even if appellant’s preparer had correctly reported the estimated tax payments and had paid the full amount of tax still due at that time rather than having underpaid it by \$232,000, the return and accompanying payment were submitted on September 30, 2022, well after the due date for payment of April 15, 2022. Accordingly, at best, appellant’s contentions would not eliminate the late payment penalty but only reduce in part the monthly portion of the late payment penalty. (See R&TC, § 19132(a)(2).)