

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)	OTA Case No. 240917452
K. SHEPELA AND)	
S. SHEPELA)	
)	
)	

OPINION

Representing the Parties:

For Appellants:	K. Shepela
For Respondent:	David Muradyan, Attorney Nancy Parker, Attorney

S. RIDENOUR, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, K. Shepela and S. Shepela (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants' claim for refund of \$2,491.60 for the 2023 tax year.

Appellants elected to have this appeal determined pursuant to the procedures of the Small Case Program. Those procedures require the assignment of a single panel member. (Cal. Code Regs., tit. 18, § 30209.05(b).)

Office of Tax Appeals (OTA) Administrative Law Judge Sheriene Anne Ridenour held a virtual oral hearing for this matter on June 25, 2025. At the conclusion of the oral hearing, the record was closed, and this matter was submitted on the oral hearing record pursuant to California Code of Regulations, title 18, section 30209(b).

ISSUE

Whether appellants have established reasonable cause for failing to make a timely payment of tax for the 2023 tax year.

FACTUAL FINDINGS

1. Appellants timely filed their 2023 joint tax return on April 5, 2024. Appellants reported tax due of \$43,266 and self-assessed an underpayment of estimated tax penalty of \$1,264, for a total amount due of \$44,530. Appellants did not remit payment with their

return.

2. On April 24, 2024, appellants made an untimely payment of \$44,530.
3. On July 1, 2024, FTB sent a State Income Tax Balance Due Notice to appellants, notifying them of a balance due, which included a late payment penalty of \$2,379.63 and an underpayment of estimated tax penalty \$634, plus interest.
4. Appellants paid the outstanding liability and timely filed a claim for refund requesting abatement of the late payment penalty, which FTB denied.
5. This timely appeal followed.
6. On appeal, appellants provide: 1) email communications between appellants and their CPA at Avery & Greig, dated from March 14, 2024, to April 24, 2024; 2) April 5, 2023 and April 8, 2023 payment information for appellant K. Shepela's mother's federal and state tax liabilities, respectively; 3) IRS Form 8879 IRS e-file Signature Authorization signed by appellants and dated April 4, 2024, authorizing their CPA firm to file their 2023 federal tax return electronically; and 4) a death certificate for appellant K. Shepela's father's death on September 18, 2023.
7. During the oral hearing, appellant K. Shepela was sworn in as a witness.

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. (R&TC, § 19132 (a)(1)(A).) The penalty is composed of two parts: (1) five percent of the tax which is unpaid by the due date; and (2) 0.5 percent of the outstanding balance for each month or fraction thereof, up to a maximum of 40 months. (R&TC, § 19132 (a)(2)(A) & (B).) 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.)

Appellants' payment, which was due April 15, 2024, was paid April 24, 2024. Therefore, appellants' payment was nine days late, which is a fraction of one month. Thus, the late payment penalty was calculated as 5 percent of the tax due ($\$43,266 \times .05 = \$2,163.30$), plus 0.5 percent of the tax due multiplied by 1 month ($\$43,266 \times .005 \times 1 = \216.33), for a total of \$2,379.63. (See R&TC, § 19132 (a)(2)(A) & (B).) OTA finds the late filing penalty was properly imposed and correctly calculated.

The late payment penalty may be abated if the taxpayer shows that the failure to make a timely payment of tax was due to reasonable cause and was not due to willful neglect. (R&TC, § 19132(a)(1).) 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. (*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 Rougeau*, 2021-OTA-335P.) As to the taxpayer's burden, the applicable standard of proof is by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(b).) To meet this evidentiary standard, a party must establish by documentation or other evidence that the circumstances it asserts are more likely than not to be correct. (*Appeal of Rougeau, supra.*) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof. (*Appeal of Moren*, 2019-OTA-176P).

Appellants contend they have reasonable cause for failing to make a timely payment of tax for the 2023 tax year. Appellants assert that the loss of appellant K. Shepela's father in September 2023 caused them stress and strain, and that appellants did "everything in [their] power to timely file" returns for themselves and for appellant K. Shepela's parents. Appellants argue that they were "incredibly overburdened at the time the payment was due as a result of the recent loss of [appellant K. Shepela's] father and [appellant K. Shepela's] mother's wavering health." Appellants contend that in addition to losing appellant K. Shepela's father, appellant K. Shepela lost his job of fourteen years in January 2023, which added to appellants' level of stress.

Appellants assert that once they had some "clear headspace," they reviewed their tax returns and inquired with their CPA for further clarification about their 2023 California tax obligation, having already timely paid their federal tax liability on the day of filing. Specifically, appellants contend they contacted their CPA multiple times to confirm that they did not have a California tax liability, and, citing *U.S. v. Boyle* (1985) 469 U.S. 241, 250 (*Boyle*), note that reasonable cause can be established when a taxpayer shows reasonable reliance on the advice of an accountant or attorney, even when such advice turns out to have been mistaken. Appellants contend that an ordinary person "would have taken their trusted advisor's initial direction on its face," and that appellants, by "confirming multiple times to ensure that [they] continued to act in good faith and comply" with their tax obligations, "demonstrated a higher duty of care." Appellants argue that they have a long history of timely payment and "hope the fact that this minor slip was rectified immediately after discovery (9 days past due) will support the fact" that appellants always intended to pay their tax liability.

Illness or other personal difficulties may establish reasonable cause where the taxpayer presents credible and competent proof that the circumstances of the illness continuously prevented the taxpayer from complying with the law. (*Appeal of Triple Crown Baseball LLC*,

2019-OTA-025P.) When the taxpayer alleges reasonable cause based on an incapacity due to illness or the illness of an immediate family member, the duration of the incapacity must approximate that of the tax obligation deadline. (*Appeal of Head and Feliciano*, 2020-OTA-127P.) However, if the difficulties simply cause the taxpayer to sacrifice the timeliness of one aspect of the taxpayer's affairs to pursue other aspects, the taxpayer must bear the consequences of that choice. (*Ibid.*)

OTA is sympathetic to appellants' difficult personal circumstances involving the death of a parent, the ailing health of another parent, and the loss of a job after 14 years, all occurring within months of each other. While death or serious illness of a taxpayer or a member of a taxpayer's immediate family may constitute reasonable cause for failure to pay tax when due (see *U.S. v. Boyle* (1985) 469 U.S. 241, 243, fn. 1),¹ the death or illness must nevertheless involve a combination of severity and timing that would have made it "virtually impossible" to comply and prevented the taxpayer's compliance with paying the tax when due (see *Estate of Stuller v. U.S.* (7th Cir. 2016) 811 F.3d 890, 899).² Appellants' tax liability for the 2023 tax year was due on April 15, 2024. Appellants have not demonstrated how appellant K. Shepela's father's death on September 18, 2023, or how appellant K. Shepela's mother's ailing health, involved a combination of severity and timing that would have made it "virtually impossible" for appellants to timely comply with paying their tax obligation. Moreover, despite appellants' personal circumstances, they were nevertheless able to timely comply with their 2023 federal filing and payment obligations.

Regarding appellants' contention that they reasonably relied on their CPA, the U.S. Supreme Court stated in *Boyle, supra*, that one does not need to be a tax expert to know that tax returns have fixed filing dates and taxes must be paid when due. The fact that a tax preparer was expected to attend to a matter does not relieve a taxpayer of the duty to comply with the statute, and an agent's failure to timely pay tax cannot constitute reasonable cause for the taxpayer. (*Appeal of Fisher*, 2022-OTA-337P.) However, reasonable cause may be found

¹ Although *Boyle, supra*, concerns the late filing penalty, the issue of whether a taxpayer has demonstrated reasonable cause for failure to pay tax nevertheless asks the same questions and weighs the same evidence as the inquiry of whether reasonable cause exists for failure to file a tax return. Therefore, decisions analyzing whether reasonable cause existed for failure to timely file a tax return are persuasive authority for determining whether reasonable cause existed for the failure to timely pay the tax. (*Appeal of Triple Crown Baseball LLC, supra.*)

² *Estate of Stuller v. U.S., supra*, held that a taxpayer who had suffered through many tragic events in the 15 months before her return was due had not established reasonable cause because the events were not sufficiently severe and continuous to make it "virtually impossible" to comply with the filing requirements.

when a taxpayer relies on substantive advice from an accountant or attorney on a matter of tax law, such as whether liability exists. (*Boyle, supra*; *Appeal of Mauritzson*, 2021-OTA-198P.) Appellants note that the 2023 tax year was “a very vanilla filing on an average year” and “there were no complicated financial transactions that happened.” Nevertheless, they argue that they reasonably relied on, and repeatedly emailed, their CPA to confirm whether taxes were due.

While appellants argue that they reasonably relied on substantive tax advice, appellants’ argument is misplaced. Appellants’ CPA did not provide appellants with advice on a substantive matter of tax law, such as whether or not a regulation or statute pertained to a possible tax liability. Rather, it appears that there was miscommunication as to whether appellants had a tax payment due.³ Moreover, regardless of the possible miscommunication or ambiguity on behalf of the CPA, appellants’ tax return clearly *reported* tax due of \$43,266; however, payment was *not* timely remitted. Appellants state they did not look at their return until April 24, 2024, which is 19 days after appellants filed their tax return (i.e., April 5, 2024) and nine days after the filing and payment deadline. However, when taxpayers file a tax return, they declare that they have examined the return and that to the best of their knowledge and belief, the return is true, correct, and complete. Taxpayers also have an obligation to pay the tax when due. Reliance on a tax professional cannot function as a substitute for compliance with an unambiguous statute. (*Boyle, supra*.) In other words, when the face of a return clearly shows an amount due, a taxpayer may not rely on their tax return preparer to inform them of whether a payment is required. Moreover, to the extent that appellants’ failure to meet their tax obligations was due to a possible “oversight,” such as reviewing a return before it is filed to ensure accuracy in reporting and payment of the reported tax liability, it is well established that such reasons do not constitute reasonable cause for abating a penalty. (*Appeal of Red Vision Systems, Inc.*, 2023-

³ OTA has reviewed the emails between appellants and their CPA regarding their 2023 tax obligations, and while it is unclear if the CPA is referring to a federal or California return, notes the following: (1) on April 2, 2024, the CPA informed appellants that their return was ready for their review and final approval, and that one of the “several issues left” was that should appellants’ tax liability exceed \$20,000, then “auto debit from [a] bank account is required”; (2) appellants’ replied on April 4, 2024, stating it is “good to see that we have an overpayment for 2023” and inquiring about “pre-payments for 2024”; (3) on April 4, 2024, appellants emailed their CPA “[r]econfirming that [they] have an overpayment for Fed/State for 2023,” and that they do not need to make any estimated payments for 2024, to which the CPA replied, “That is correct”; (4) on April 24, 2024, appellants emailed their CPA stating that they read the CPA’s earlier email as indicating appellants “don’t pay anything for 2023 or for 2024 estimated taxes,” however, upon “filing the hard copy” of the return, it looks as if appellants do not have an overpayment of California tax and rather owed \$44,530, and appellants requested the CPA to confirm if that is correct; (5) the CPA responded the same day stating, “You are correct. No additional ES payments needed”; and (6) appellants thereafter requested their CPA call them.

OTA-561P.) As such, appellants have not established reasonable cause to abate the late payment penalty.

HOLDING

Appellants have not established reasonable cause for failing to make a timely payment of tax for the 2023 tax year.

DISPOSITION

FTB's action is sustained.

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Sheriene Anne Ridenour
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Sheriene Anne Ridenour
Administrative Law Judge

Date Issued: 9/30/2025