OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **V. HAZARD AND** **M. HAZARD**	OTA Case No. 230713723

OPINION

Representing the Parties:

For Appellants: V. Hazard

For Respondent: Amelia Breen, Attorney
Jackie Zumaeta, Deputy Chief Counsel

For Office of Tax Appeals: William J. Stafford, Attorney

S. BROWN, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, V. Hazard and M. Hazard (appellants) appeal an action of respondent Franchise Tax Board (FTB) denying a claim for refund of $2,025.76 for the 2021 tax year.[1]

Administrative Law Judge Suzanne B. Brown and Hearing Officers Erica Parker and Kim Wilson 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 decision.

ISSUE

Whether appellants have demonstrated reasonable cause to abate the late payment penalty imposed under R&TC section 19132.

[1] FTB imposed a late payment penalty of $2,025.76, plus applicable interest. However, FTB's letter denying appellants' claim for refund states that FTB denied a claim amount of $1,157.61, plus applicable interest. On appeal, FTB agreed to abate the penalty difference of $868.15 (i.e., $868.15 = $2,025.76 - $1,157.61.)

FACTUAL FINDINGS

1. Appellant-husband was diagnosed with cancer and, as relevant here, received extensive medical treatments from 2020 through June 2022. Those treatments caused severe side effects to appellant-husband and required frequent travel to medical appointments.[2] During the period March 30, 2022, through June 28, 2022, those appointments occurred with increased frequency, and were particularly debilitating, due to a course of radiation treatments.
2. Appellant-husband is a CPA who operates a business that includes tax preparation. On February 13, 2022, the business's office was burglarized, as reflected by evidence including photographs of office damage and a document titled "Report Information and Victims' Bill of Rights," which shows that the burglary was reported to the Los Angeles County Sheriff's Department. The items stolen included his computer and a safe that contained documents that he had prepared in anticipation of filing appellants' 2021 tax return.
3. Appellants filed a timely joint 2021 California Resident Income Tax Return (Form 540) on October 15, 2022 (i.e., within the automatic extension period), reporting total tax of $61,712.
4. After reporting withholdings of $34,390, estimated tax payments of $2,000, and self-assessed interest of $384, appellants reported a total amount due of $25,706, which appellants submitted with their return on October 15, 2022. Appellants' 2021 reported business income for 2021 was more than three times the amount of their reported business income in 2020, and their adjusted gross income (AGI) for 2021 was approximately 180 percent of their 2020 AGI.
5. On November 7, 2022, FTB issued appellants a Notice of Tax Return Change, indicating that (1) FTB had imposed a late payment penalty of $2,025.76 and interest of $386.13; and (2) despite appellants' payments, credits, and/or withholdings, appellants still had a balance due of $2,027.89.
6. Appellants filed a timely claim for refund on November 28, 2022, asserting that the late payment penalty should be abated for reasonable cause. Appellants stated that

[2] Testimony established that appellant-wife provided the transportation to these medical appointments.

information necessary to complete their 2021 California tax return was stolen during the office burglary on February 13, 2022. Appellants asserted that despite difficulties caused by the burglary, they reasonably estimated that no California income tax would be due as of the applicable payment deadline of April 15, 2022.

7. On April 3, 2023, appellants filed a second claim for refund for the 2021 tax year.
8. After reviewing the matter, FTB denied appellants' claim for refund.
9. In response, appellants filed this timely appeal.
10. While FTB imposed a late payment penalty of $2,025.76, FTB's letter denying appellants' claim for refund states that FTB denied a claim amount of $1,157.61. On appeal to OTA, FTB agreed to abate the penalty difference of $868.15 ($2,025.76 - $1,157.61 = $868.15).

DISCUSSION

R&TC section 19132 provides that FTB may impose a late payment penalty when a taxpayer fails to pay the amount shown as due on the return on or before the due date of the return. The late payment penalty may be abated if the taxpayers establish that the failure to make a timely tax payment was due to reasonable cause and not due to willful neglect. (R&TC, § 19132(a)(1).) Here, FTB does not assert willful neglect. Therefore, the question is whether appellants have demonstrated reasonable cause for their failure to timely pay their required taxes in full.[3]

To establish reasonable cause for the late payment of tax, taxpayers must show that the failure to make timely payments of the proper amount of tax occurred despite the exercise of ordinary business care and prudence. (*Appeal of Friedman*, 2018-OTA-077P.)[4] A taxpayer

[3] Appellants also request penalty abatement based on their history of paying and filing their taxes on time and emphasize that the IRS abated their federal late payment penalty for the 2021 tax year. Such a history is insufficient, on its own, to demonstrate reasonable cause for a late payment of tax for the tax year at issue here. (See *Appeal of Scanlon*, 2018-OTA-075P.) While the IRS has a penalty abatement program called First Time Abate, neither the California Legislature nor FTB adopted a comparable penalty abatement program for the 2021 tax year. R&TC section 19132.5 allows for the abatement of an individual's first-time timeliness penalties, but that section only applies to tax years beginning on or after January 1, 2022. (R&TC, § 19132.5(f).) Thus, no relief is available on this basis.

[4] Since the issue of whether a taxpayer has demonstrated reasonable cause for failure to pay tax asks the same questions and weighs the same evidence as the inquiry of whether reasonable cause exists for failure to file a tax return, Opinions 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*, 2019-OTA-025P, fn. 8.)

bears the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Ibid*.) Taxpayers have the burden of establishing reasonable cause, and the applicable standard of proof is by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(b).) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Scanlon*, 2018-OTA-075P.)

While illness or other personal difficulties may constitute reasonable cause, taxpayers must present competent and credible proof that the circumstances continuously prevented them from complying with the law. (*Appeal of Head and Feliciano*, 2020-OTA-127P.) If the difficulties simply caused the taxpayers to sacrifice the timeliness of one aspect of their affairs to pursue other aspects, the taxpayers must bear the consequences of that choice. (*Ibid*.)

Here, there is no dispute that that a break-in and burglary occurred at appellant-husband's business office on February 13, 2022, and the items stolen included a computer and a safe. There is also no dispute that appellant-husband experienced serious illness and severe side effects as the result of ongoing medical interventions, particularly due to radiation treatments he received during the period March 30, 2022, through June 28, 2022. However, the issue concerns whether appellants have proven by a preponderance of the evidence that these circumstances continuously prevented appellants from exercising ordinary care and prudence to timely pay their tax liability, and whether an ordinarily intelligent and prudent businessperson would have so acted under similar circumstances.

Appellants contend that, using the information available prior to the April 15, 2022 deadline, they reasonably estimated their tax liability for the 2021 tax year. Based on cash flows, distributions, and their income in the previous tax year, appellants initially estimated that they would not owe additional tax for the 2021 year; appellants argue that during the relevant time period, the combination of the theft of records and delays caused by medical treatments continuously prevented appellants from accurately estimating their tax liability.

Appellant-husband's testimony establishes that the safe stolen during the February 13, 2022 burglary contained detailed information necessary to file an accurate 2021 California return, including an analysis of 1,033 credit card entries. The evidence shows that, because the credit card charges consisted of a combination of business and personal expenses, both appellants needed to participate in identifying which charges were business expenses, and it eventually took significant time and effort to reconstruct the credit card analysis. Appellants also

needed to obtain duplicate information from eight different entities that had provided Schedule K-1s; appellant-husband credibly testified that he requested the duplicate copies from the various accountants for those entities, which involved multiple requests to those representatives and took two to three weeks.

However, due to the timing of appellant-husband's cancer treatments, appellants were unable to reconstruct the stolen information and accurately estimate their tax liability by April 15, 2022. The evidence establishes that, after appellant-husband recovered from the radiation treatments, he worked extensively, including nights and weekends, to recreate the stolen information and then prepare appellants' tax return. Appellant-husband's testimony corroborates appellants' written estimate indicating that, once they had reconstructed the information, it took over 104 hours to prepare the combination of appellants' state and federal tax returns.

As shown in the written estimates in appellants' California Income Tax Summary and corroborated by credible testimony at the hearing, as of April 15, 2022, appellants had reasonably anticipated that their 2021 AGI would be less than their 2020 AGI; thus, appellants anticipated receiving a tax refund when they filed their 2021 return. However, after appellants were able to reconstruct the stolen information and complete preparation of their return, they determined that their 2021 income was much higher than they had originally anticipated. Additionally, after a thorough analysis of the business income and expenses, appellants' reported business income for 2021 ultimately was more than three times the amount of their business income in 2020, and their AGI for 2021 was unexpectedly almost twice as much as their 2020 AGI. Given all of these circumstances, OTA finds it was reasonable that as of April 15, 2022, appellants did not accurately estimate the increase to the business income for the 2021 tax year.

In light of all evidence, OTA finds that the combination of appellant-husband's efforts to compile his tax documents prior to the increased frequency of his medical treatments, the theft of appellants' tax documents and workpapers, and his documented medical incapacity resulted in appellants' failure to accurately estimate and timely pay their taxes, and an ordinarily intelligent and prudent businessperson would have so acted under similar circumstances. The record establishes that these circumstances continued consistently into the summer of 2022, at which point appellants worked diligently to recreate the stolen information and prepare the return;

hence, OTA finds that appellants complied within a reasonable time period after the facts and circumstances causing their noncompliant behavior ceased to exist. (See *Appeal of Triple Crown Baseball, LLC*, 2019-OTA-025P ("an acceptable reason for failure to pay taxes 'will excuse such failure only so long as the reason remains valid'").) Accordingly, appellants have proven by a preponderance of the evidence that the combination of circumstances continuously prevented them from exercising ordinary business care and prudence to timely pay the tax during the relevant period, and an ordinarily intelligent and prudent businessperson would have so acted under similar circumstances. Therefore, OTA finds that the failure to timely pay was due to reasonable cause.

FTB notes that appellants filed a joint 2021 California return and, therefore, under R&TC section 19006(b), each spouse is individually responsible for the accuracy of the return. FTB argues appellants have not shown that appellant-wife was unable to ensure timely payment.[5] However, the evidence establishes both that appellant-wife's role in appellant-husband's treatment prevented her from exercising ordinary business care and prudence through June 2022, and that an accurate estimate required both appellants' participation in recreating the stolen information. In particular, appellant-wife could not have accurately analyzed the 1,033 credit card entries, which consisted of a combination of business and personal expenses, without appellant-husband's participation.

Thus, appellants have demonstrated reasonable cause for abatement of the late payment penalty.

[5] In briefing, appellants also argued that reasonable cause existed because their first responsibility was to secure client information that was stolen and inform their clients of the burglary. To the extent that those obligations caused appellants to sacrifice the timeliness of one aspect of their affairs to pursue other aspects, appellants must bear the consequences of that choice, and those circumstances would not constitute reasonable cause. (*Appeal of Head and Feliciano*, *supra*.) However, OTA relies on other grounds to reach the conclusion regarding reasonable cause, and thus the Opinion does not further address this argument.

HOLDING

Appellants have demonstrated reasonable cause for abatement of the late payment penalty.

DISPOSITION

FTB's action denying appellants' claim for refund for the 2021 tax year is reversed.

Signed by:
Suzanne B. Brown
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Suzanne B. Brown
Administrative Law Judge

We concur:

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Erica Parker
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Erica Parker
Hearing Officer

Signed by:
Kim Wilson
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Kim Wilson
Hearing Officer

Date Issued: 9/23/2025