

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
MARY M. BULLEY 2003 TRUST) OTA Case No. 250522278
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OPINION

Representing the Parties:

For Appellant: Patrick A. Scheufler, CPA

For Respondent: Leoangelo C. Cristobal, Attorney

E. PARKER, Hearing Officer: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Mary M. Bulley 2003 Trust (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$4,677.99 for the 2021 tax year.

Appellant 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).) Appellant waived the right to an oral hearing; therefore, the matter was submitted to the Office of Tax Appeals (OTA) on the written record pursuant to California Code of Regulations, title 18, section 30209(a).

ISSUE

Whether appellant has established reasonable cause to abate the late payment penalty.

FACTUAL FINDINGS

1. On February 27, 2023, appellant timely filed its 2021 California Fiduciary Income Tax Return (Form 541) for fiscal year ending June 30, 2022, reporting a tax due of \$71,969.
2. On March 3, 2023, appellant untimely paid the outstanding tax balance due of \$71,969.
3. On April 19, 2023, FTB issued to appellant an Income Tax Due Notice to impose the late payment penalty and applicable interest.
4. Appellant paid the outstanding balance due for the 2021 tax year and filed a claim for refund.

5. FTB denied appellant's claim for refund and appellant filed this appeal.

DISCUSSION

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. (R&TC, § 19001.) The due date for a fiscal year taxpayer, like appellant, is the 15th day of the fourth month following the close of the fiscal year. (R&TC, § 18566.)

Appellant's payment due date for fiscal year ending June 30, 2022, was October 15, 2022. (R&TC, § 18566.) However, appellant untimely paid its tax due on March 3, 2023. Appellant nonetheless asserts that since the tax was paid within the extended due date to file the return, the payment was timely. Appellant further contends that the IRS has removed all penalties and interest because the IRS recognized that appellant timely filed within the extended due date. Appellant argues that FTB must act in accordance with the IRS and remove the late payment penalty. Appellant provides a copy of its IRS transcript and a letter from the IRS indicating that penalties were removed because it was the first time appellant was required to file a return. The letter states that this type of penalty removal is only available one time and future requests for penalty removal will be based on reasonable cause criteria.

FTB does not dispute that appellant timely filed its return within the extended due date. However, the extension of time for filing a return is not an extension of time to pay. (Cal. Code Regs., tit. 18, § 18567(a).) Additionally, appellant's documentation does not support a finding that the IRS removed the late payment penalty because appellant timely filed within the extended due date. Rather, appellant's letter from the IRS indicates penalties were removed based on the IRS's First Time Abate program. However, except for the late filing and payment penalties for individual taxpayers for taxable years beginning on or after January 1, 2022, California law does not provide for such a program. (See *Appeal of Porreca*, 2018-OTA-095P; R&TC, § 19132.5.)

The late payment penalty will 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 Leebow*, 2025-OTA-426P.) The taxpayer bears the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly

under the circumstances. (*Ibid.*) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof. (*Appeal of Moren*, 2019-OTA-176P.)

Appellant contends that reasonable cause exists to abate the late payment penalty because it exercised ordinary business care and prudence by engaging a CPA and estate planning attorney to handle all tax compliance obligations. Appellant asserts that necessary financial information was not received from the attorney until after the June 30th fiscal year-end and the tax preparation software program had limitations that prevented an accurate tax calculation. Appellant provides no additional documentation in support of its position, but argues that since it relied in good faith on qualified professionals and acted promptly once the issue was identified, the late payment penalty should be abated.

A taxpayer's reliance on a tax professional to take care of an administrative act, including paying tax, generally does not constitute reasonable cause because a taxpayer has a personal, nondelegable duty to meet statutory deadlines. (*U.S. Boyle* (1985) 469 U.S. 241, 250 (*Boyle*); see also *Appeal of Summit Hosting LLC*, 2021-OTA-216P [applying *Boyle* to the California late payment penalty].) Reliance on a tax professional cannot function as a substitute for compliance with an unambiguous statute. (*Boyle, supra.*)

Here, appellant failed to pay its tax liability by the unambiguous statutory due date. (See R&TC, §§ 19001, 18566.) Appellant provides no documentation in support of its claims that necessary financial information was unavailable or that the tax software was unable to compute the tax liability by the October 15, 2022 payment due date. An ordinarily intelligent and prudent businessperson would have taken steps to ensure it paid its tax liability by the statutory due date. Apart from stating that it hired a CPA and estate planning attorney, appellant provides no explanation or evidence of what steps it took or questions it asked to ensure it complied with its statutory obligation to timely pay its tax due. Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Moren, supra.*) Appellant has not established it acted with ordinary business care and prudence.

HOLDING

Appellant has not established reasonable cause to abate the late payment penalty.

DISPOSITION

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

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Erica Parker
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Erica Parker
Hearing Officer

Date Issued: 12/3/2025