

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

|                                 |   |                        |
|---------------------------------|---|------------------------|
| In the Matter of the Appeal of: | ) | OTA Case No. 240415998 |
| <b>L. CHOW AND</b>              | ) |                        |
| <b>J. CHAN</b>                  | ) |                        |
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**OPINION**

Representing the Parties:

|                            |                                                                            |
|----------------------------|----------------------------------------------------------------------------|
| For Appellants:            | Fred R. Langer, CPA                                                        |
| For Respondent:            | Leoangelo C. Cristobal, Attorney<br>Maria Brosterhous, Attorney Supervisor |
| For Office of Tax Appeals: | Nguyen Dang, Attorney                                                      |

V. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, L. Chow and J. Chan (appellants) appeal an action by the Franchise Tax Board (respondent) denying appellants' claim for refund of \$6,714.45 for the 2020 tax year.

Office of Tax Appeals (OTA) Panel Members Veronica I. Long, Huy "Mike" Le, and John O. Johnson held a virtual oral hearing for this matter on October 9, 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, (Regulation) section 30209(b).

**ISSUE**

Whether appellants have established reasonable cause to abate the late-payment penalty.

**FACTUAL FINDINGS**

1. During the 2020 tax year, L. Chow was a partner in an architectural limited liability partnership (the Partnership).
2. L. Chow received from the Partnership a draft federal Schedule K-1 (IRS Form 1065) showing his distributive share of ordinary business income for the fiscal year ended September 30, 2020.

3. L. Chow received from the Partnership a finalized federal Schedule K-1 and a California Schedule K-1 (CA Form 565) dated July 13, 2021, for the same period. These forms show a similar distributive share of ordinary business income as the draft federal Schedule K-1. However, the California Schedule K-1 also shows a substantial California adjustment which more than tripled the amount of ordinary business income from the Partnership that L. Chow was required to recognize for California income tax purposes.
4. On September 7, 2021, appellants filed a joint 2020 California resident income tax return (Return) reporting a balance due.
5. Shortly thereafter, respondent issued a billing notice to appellants showing unpaid tax due and imposing a late-payment penalty, and applicable interest.
6. Appellants paid the balance due and on June 23, 2023, filed a timely refund claim requesting that the late-payment penalty be abated for reasonable cause.
7. Respondent denied the claim.
8. This timely appeal followed.

#### DISCUSSION

The late-payment penalty shall not apply if the failure to timely pay was due to reasonable cause and not willful neglect. (R&TC, § 19132(a).) To establish reasonable cause, a taxpayer must show that the failure to timely pay occurred despite the exercise of ordinary business care and prudence; in other words, a taxpayer must demonstrate that he or she acted as an ordinarily intelligent and prudent businessperson would have acted under similar circumstances. (*Appeal of Friedman*, 2018-OTA-077P.) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof. (*Appeal of Scanlon*, 2018-OTA-075P.)

Appellants argue the penalty should be abated because they acted reasonably in using the amounts reported in the draft federal Schedule K-1 to estimate their California income tax liability prior to the payment deadline.<sup>1</sup> Appellants contend they did not receive the California Schedule K-1 until after the payment deadline had elapsed, and without that form, they could not have foreseen that a California adjustment was required.

The most important factor in determining reasonable cause in this situation is the extent of the taxpayer's efforts to assess his or her tax liability. (*Appeal of Moren*, 2019-OTA-176P.)

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<sup>1</sup> Taxes are ordinarily required to be paid on or before April 15th following the close of the calendar year. (R&TC, §§ 19001, 18566.) However, due to the COVID-19 pandemic, the payment deadline was extended to May 17, 2021. (Respondent's news release available at: <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2021-03-state-tax-deadline-for-individuals-postponed-until-may-17-2021.html>.)

Here, appellants provide no evidence indicating what steps, if any, they took to estimate their California income tax liability. Even accepting appellants' contention that they did so using the amounts reported in the draft federal Schedule K-1, utilizing amounts computed for federal income tax purposes without considering the potential California tax consequences is not a reasonable or accurate method of computing the California tax due, as plainly demonstrated by the substantial difference in income reported on the Return.

Regarding appellants' contention that they lacked the information necessary to determine that a California adjustment was required, a purported lack of documentation or difficulty calculating a tax liability does not, by itself, constitute reasonable cause for a late payment. (*Appeal of Moren, supra.*) To establish reasonable cause due to a lack of information, appellants must prove that: (1) they were unable to reasonably estimate their tax liability without the information and (2) they could not have acquired this information prior to the payment of their 2020 tax liability. (*Ibid.*)

Appellants assert the California adjustment giving rise to the late payment was related to unspecified changes occurring in 2020 to Internal Revenue Code (IRC) sections 167 and 168, which California does not conform. Appellants further assert the Partnership notified its non-resident partners that a California adjustment was required to account for these changes when issuing the draft federal Schedule K-1, but inadvertently forgot to inform its resident partners, which included L. Chow.

The basis for the California adjustment is not apparent from the record, nor is there any evidence to support that it was related to IRC sections 167 and 168. Consequently, OTA is unable to determine what information was necessary for appellants to reasonably estimate their California tax liability. Regardless, appellants have not shown they made any attempt to obtain the allegedly missing information, which, as appellants concede, was readily available from the Partnership prior to the payment deadline. Thus, even assuming appellants lacked certain information required to compute their California tax liability, appellants' failure to inquire after that information means there is no reasonable cause for abating the penalty. (See *Appeal of Moren, supra* [reasonable cause found where the taxpayer inquired but was unable to timely obtain information from a trust to determine the taxability of trust distributions made to the taxpayer].)

HOLDING

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

DISPOSITION

Respondent's action is sustained.

Signed by:

*Veronica I. Long*

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Veronica I. Long  
Administrative Law Judge

We concur:

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*Huy "Mike" Le*

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Huy "Mike" Le  
Administrative Law Judge

DocuSigned by:

*John O Johnson*

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John O. Johnson  
Administrative Law Judge

Date Issued: 1/8/2026