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OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **P. SWARTZ**	)	OTA Case No. 231014459

OPINION

Representing the Parties:

For Appellant:	Christopher W. Campbell, Representative David Han, Representative P. Swartz
For Respondent:	Charles Tsai, Attorney Jaclyn Zumaeta, Assistant Chief Counsel
For Office of Tax Appeals:	Nguyen Dang, Attorney

S. ELSOM, Hearing Officer: Pursuant to Revenue and Taxation Code (R&TC) section 19324, P. Swartz (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant's claim for refund of $240,378.48 for the 2021 tax year.

Office of Tax Appeals (OTA) Panel Members Seth Elsom, Greg Turner, and Teresa A. Stanley held an oral hearing for this matter in Cerritos, California on October 15, 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 appellant has established reasonable cause for the late payment of tax of $2,440,000.[1]

[1] On appeal, the parties agree that appellant's October 11, 2022 payment of $259,731 is untimely and is subject to the late-payment penalty. Moreover, appellant does not contest the underpayment of estimated tax penalty, so OTA does not discuss it further.

FACTUAL FINDINGS

1. Appellant was the founder, sole owner, and president of a company (the Company) which operated domestically and internationally, in China and Europe. At the hearing, appellant testified that the Company employed about 100 employees, and that appellant shared an adjoining office with the Company's controller, who oversaw the Company's finances. Appellant testified that "with that philosophy [of tight control over the Company] . . . it is incumbent on me to watch everything pretty carefully, including our tax payments and our balances."
2. Appellant employed Deloitte & Touche (Deloitte) as his longstanding tax preparer.[2] After appellant verified the amount of tax due with Deloitte, he would typically instruct the Company's controller to pay appellant's tax liabilities from the Company's bank account. Appellant testified that, to determine that the taxes had been paid, "my practice was always to check [the Company's] bank balances . . . how much money [the Company] had in the bank; and I could see when the money was withdrawn to pay federal and state taxes."
3. In early 2021, appellant began soliciting bids from third-party buyers to sell his stock interest in the Company. Appellant testified that he negotiated with a Fortune 500 company which required "a million pieces of information and inspections and interviews and all of that."
4. Following his typical payment practice, appellant instructed the Company's controller to make payments of appellant's personal estimated tax liabilities for the 2021 tax year from the Company's bank account in the amounts of $770,000, and $2,000,000, for the first quarter (Q1) payment and the Q3 payment, respectively.
5. The Company's controller inadvertently switched appellant's 2021 quarterly estimated tax payments made to respondent and the IRS for the Q1 and Q3 payments. For the Q1 payment, on April 15, 2021, the Company paid $330,000 to respondent and $770,000 to the IRS. For the Q3 payment, on September 15, 2021, the Company paid zero to respondent and $2,000,000 to the IRS. This error resulted in a California underpayment of tax of $2,440,000.[3]

[2] Appellant testified that he employed Deloitte to prepare his taxes for "the better part of 30 years."

[3] The sum of appellant's California estimated tax liability for Q1 and Q3 was $2,770,000, but because of the error, appellant only paid $330,000; therefore, appellant's underpayment was $2,440,000.

6. Appellant subsequently reviewed the Company's bank account balance and confirmed that the sum of the Q1 and Q3 estimated tax payments due to the IRS and respondent, which totaled $3,100,000, was deducted from the Company's bank account balance. Appellant did not conduct any additional review to determine whether the Company paid the correct amount of tax to respondent.
7. On October 19, 2021, appellant entered into a Membership Interest Purchase Agreement (MIPA) with an unrelated buyer to sell his entire stock interest in the Company for $200 million.[4] Following the sale, appellant made a California estimated tax payment of $20,100,000 for Q4 of the 2021 tax year from his personal bank account.
8. On October 11, 2022, appellant filed a timely 2021 California Resident Income Tax Return reporting total tax of $24,305,625, total payments of $24,045,894, and tax due of $259,731, which appellant paid on the filing date. However, due to the Company controller's error in making the estimated tax payments for Q1 and Q3, appellant's actual payments totaled only $21,605,894,[5] and therefore, appellant had unpaid tax of $2,440,000.
9. On November 7, 2022, respondent issued appellant a Notice of Tax Return Change – Revised balance (Revised Balance Notice), reducing his reported estimated tax payments by $2,440,000, and imposing a late-payment penalty on this amount.
10. On November 23, 2022, appellant made a payment of $2,717,964.32 to satisfy the balance due and filed a claim for refund seeking reasonable cause abatement of the late-payment penalty.
11. Appellant provided an affidavit in support of his reasonable cause claim, which swears that: (1) he verbally instructed the Company's controller to make his California estimated tax payments from the Company's bank account; (2) he reviewed and confirmed "in person" with the Company's controller that the payments due to the IRS and respondent for Q1 and Q3 were correct; (3) while appellant and the Company's controller were in the office together, the Company's controller made the respective payments simultaneously with appellant's review and confirmation that the payments were correct, (4) appellant verified that there were sufficient funds in the Company's

[4] The MIPA required appellant to reorganize the Company as a qualified S corporation subsidiary and distribute 100 percent of its stock to appellant.

[5] Appellant made tax withholdings of $14,690, quarterly estimated tax payments of $330,000, $66,204, $1,075,000, and $20,100,000, plus an extension payment of $20,000, which equals $21,605,894.

bank account to make the payments; and (5) he confirmed that the payments were debited from the Company's bank account.

12. Appellant also provided a notice from the IRS dated November 21, 2022, which indicates that the IRS revised appellant's estimated tax payments for the 2021 tax year, and, as a result, appellant was due a refund of $2,238,739.

13. Respondent denied appellant's claim for refund of the late-payment penalty.

14. This timely appeal followed.

DISCUSSION

R&TC section 19132 imposes a 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. It provides that respondent shall impose a late-payment penalty of five percent of the unpaid tax plus one-half of one percent of the remaining tax, where greater than zero, for each additional month or fraction thereof for a maximum of 40 months. Because appellant did not make a timely payment of his tax liability for the 2021 tax year, respondent imposed the late-payment penalty on the unpaid tax of $2,440,000. Appellant does not dispute the imposition or calculation of the late-payment penalty but instead asserts reasonable cause to abate the penalty.

The late-payment penalty will be abated if the failure to timely pay was due to reasonable cause and not willful neglect. (R&TC, § 19132(a)(1).) To establish reasonable cause to abate the penalty, a taxpayer must show that the failure to timely pay occurred despite the exercise of ordinary business care and prudence; that is, that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Appeal of Friedman*, 2018-OTA-077P (*Friedman*.) The failure to timely remit the balance due on a tax liability caused by an oversight or mere reliance on an agent, when standing alone, does not constitute reasonable cause. (*Ibid*.)

While California did not have a procedure for abating a late-payment penalty for the 2021 tax year based on a history of compliance,[6] a history of timely filing and payment compliance may still be considered as supporting evidence of the credibility and intent of the taxpayer. (*Appeal of Moren*, 2019-OTA-176P (*Moren*)*.)*

Appellant argues that he has established reasonable cause for his late payment of tax of $2,440,000 because: (1) it was caused by an error that occurred during his sale of the Company, which was a unique and "chaotic" event; (2) the Company's controller was a

[6] R&TC section 19132.5, effective for tax years beginning on or after January 1, 2022, allows an individual taxpayer to request a one-time abatement of a timeliness penalty. As the 2021 tax year is at issue here, this provision is inapplicable.

relatively new employee;[7] (3) appellant did not have access to the Company's bank statements after October 2021 to discover the error,[8] and (4) appellant paid the tax due as soon as respondent informed him of the amount. Appellant further asserts that he was aware of his tax obligations, had sufficient funds to pay them, and believed they were paid to respondent after he confirmed that the total amount of his tax liabilities due to respondent and the IRS had been debited from the Company's bank account for each quarterly estimated payment. Appellant asks OTA to consider that he diligently made timely payments of tax for approximately 50 years using the payment process described in the affidavit supporting the claim for refund, and that appellant had not made a payment error prior to the 2021 tax year.

Respondent argues that under *Appeal of Scanlon*, 2018-OTA-075P (*Scanlon*) and *Friedman*, *supra*, appellant's verification that the payment was deducted from the Company's bank account, by itself, is not enough to demonstrate reasonable cause, and that appellant must also verify that the "correct payments were received by the correct tax agency," here, by respondent, not the IRS. In *Scanlon*, *supra*, the taxpayers made an error in inputting the correct bank account information at the time of payment, causing their estimated payment of tax to respondent to be rejected. The taxpayers made the same payment error in a prior tax year and conducted no subsequent review of their bank account to determine whether the payment was successful. The taxpayers *in Scanlon* made no argument that any specific event contributed to their error.

In *Friedman*, *supra*, the taxpayers failed to complete the final steps to submit their payment, which resulted in the underpayment of the majority of the total tax due. Similar to *Scanlon*, *supra*, the taxpayers did not demonstrate that they took any subsequent steps to monitor their bank account to determine whether the payment was successfully made, and appellants made no assertion that any specific event contributed to the error. Thus, respondent asks OTA to follow *Scanlon* and *Friedman* and hold that a taxpayer does not establish reasonable cause through monitoring a bank account for a payment withdrawal alone, but that reasonable cause requires the taxpayer to obtain a receipt or other evidence that respondent actually received the payment.

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[7] At the hearing, appellant testified that he had employed the Company's controller for approximately three years at the date of the transactions at issue here. Appellant does not provide any evidence to support the tenure of the controller or specific examples of how the controller's experience contributed to the payment error. As a result, OTA does not further address this argument.

[8] Appellant does not assert that he attempted to review the Company's bank statements subsequent to making payment of tax for the amount in dispute. As a result, this argument is not relevant to the determination of reasonable cause and OTA does not further address it.

Respondent further argues under *U.S. v. Boyle* (1985) 469 U.S. 241, 246 (*Boyle*), the U.S. Supreme Court has established a bright-line rule that a taxpayer's reliance on an agent, such as an accountant, to file a return by the due date is not reasonable cause, and that the taxpayer's nondelegable duty also includes the duty to timely pay tax. Thus, the Company controller's error in paying appellant's estimated tax liabilities does not establish reasonable cause for appellant here.

Appellant distinguishes the precedential cases of *Scanlon* and *Friedman* from the issue under appeal here, because the appellants in those cases failed to monitor their bank accounts to determine whether *any* payment of tax was deducted from it, whereas here, appellant verified that the payment of tax was made, "albeit to the wrong tax agency."[9]

The parties disagree on whether appellant has demonstrated that an ordinarily intelligent and prudent businessperson would have acted similarly in reviewing the Company's bank account information to determine whether the correct payments were made to respondent. Thus, OTA turns to a review of appellant's actions before and after the payment due date to determine whether appellant acted with ordinary business care and prudence, and if so, whether the failure to pay tax due to respondent occurred despite such care and prudence.

The most important factor in determining whether a taxpayer acted with reasonable cause and in good faith is the extent of the taxpayer's effort to assess their proper tax liability. (*Appeal of Moren*, *supra*.) Here, it is undisputed that appellant correctly calculated the total tax liability for the 2021 tax year. It is reasonable to assume that an ordinarily intelligent businessperson who engages in the reorganization and sale of a business for $200 million would require assistance to pay the amount of estimated tax due in each quarter, as such a sale involves both significant negotiations and tax consequences. Appellant's method of payment in fact achieved the same economic and tax results that a direct distribution of cash to him

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[9] Appellant cites the nonprecedential Opinions of *Appeal of Paradigm Publishing Inc.*, 2020-OTA-249 (*Paradigm*)*, Appeal of Dermatology Management, LLC*, 2018-OTA-194 *(Dermatology)*, *Appeal of Duino*, 2023-OTA-202SCP *(Duino)* and *Appeal of Lewis*, 2020-OTA-157 *(Lewis)* to support reasonable cause. Since these Opinions are nonprecedential, they cannot be relied upon as binding by the parties or OTA in an appeal. (Cal. Code Regs., tit. 18, § 30502(b).) Though a nonprecedential Opinion has no precedential weight, it nevertheless may be found to be persuasive, even if there is no unanimous decision. (*Appeals of F.A.R. Investments, Inc. and Arciero & Sons, Inc.*, 2022-OTA-395P.)

Respondent distinguishes *Paradigm* and *Dermatology* as appeals involving "unique" and "extraordinary" matters of complex tax law. OTA agrees and finds that these cases hold no persuasive value here. Both parties cite *Lewis*, and appellant cites *Duino*, to support their respective arguments regarding the necessary level of review of bank information to establish reasonable cause. OTA notes that *Scanlon* and *Friedman* also address this issue and finds that *Lewis* and *Duino* has no persuasive value here.

followed by his separate payment of taxes would have, but in fewer steps.[10] Additionally, appellant's history of timely payments of tax lends credibility to his good faith attempt to timely pay tax during the 2021 tax year. (*Ibid*.)

Respondent's assertion that appellant delegated payment of his tax liabilities to the Company's controller is unsupported by the record in this appeal. Appellant credibly testified that he shared an adjoining office with the Controller, instructed the Company's controller to pay the estimated taxes while both individuals were in the same office together, and then subsequently reviewed the Company's bank account to determine that the total payments had been made. Therefore, in choosing the payment method above, OTA finds that appellant did not delegate the obligation to pay taxes to the Company's controller as asserted by respondent,[11] but instead requested assistance to complete the payment.

Respondent relies on *Scanlon* and *Friedman*, which OTA finds to be distinguishable from the facts of this appeal. Unlike both cases above, in the instant matter, appellant completed payments of tax to respondent (and the IRS) and established that he subsequently monitored his bank account to determine that the total amount of tax he intended to pay to respondent (and the IRS) had been deducted. Unlike *Scanlon*, *supra*, and *Friedman*, *supra*, where the taxpayers received economic benefits from their error, appellant received no economic benefit from his error. Moreover, unlike *Friedman*, appellant's error resulted in an underpayment of only approximately 10 percent of the total tax for the 2021 tax year.[12] Appellant's payment here demonstrates a level of ordinary business care and prudence in attempting to satisfy his tax liability that is absent in both *Scanlon* and *Friedman*.

Regarding appellant's assertion that the chaotic nature of the sale of the Company contributed to the payment error, appellant testified that he negotiated to sell the Company to a Fortune 500 company which required him to provide "a million pieces of information and inspections and interviews and all of that." Appellant's testimony is supported by the MIPA, which required appellant to reorganize the Company as an S corporation, distribute its stock to appellant, and sell the stock to the buyer for $200 million, indicating that appellant engaged in

[10] Appellant testified that the Company treated the payments of his personal tax liabilities as distributions of cash. Distributions of cash or property from an S corporation to its shareholder are taxed to the extent they exceed the shareholder's basis in the S corporation. (IRC, § 1368).

[11] *Boyle* is distinguishable from this appeal because OTA finds that appellant did not rely on the Company's controller. Moreover, *Boyle* is further distinguishable because appellant here took additional steps to ensure compliance with the relevant statutory deadline (e.g., appellant reviewed the Company's bank account records to determine that taxes were properly paid) and the taxpayer in *Boyle* did not.

[12] Appellant's unpaid tax of $2,440,000, divided by total tax of $24,305,625, equals 10.03 percent.

substantial and complex sales negotiations. The record in this appeal further demonstrates that the Q1 and Q3 payment errors occurred during this negotiation period. Following the sale, appellant made a timely payment of tax of $20,100,000, comprising the majority of the total tax due for the 2021 tax year. Upon notification of the underpayment from respondent, appellant paid the deficiency amount approximately two weeks later. Thus, the timing of the payment errors, appellant's timely payment of the majority of tax for the 2021 tax year, and his history of making timely payments in prior years, support his assertion that the chaotic nature of the sale directly contributed to the payment errors.

Based upon the record in this appeal, OTA finds that appellant demonstrated that he acted as an ordinarily intelligent businessperson would have under similar circumstances, because appellant: (1) correctly calculated the amount of tax due to respondent; (2) reasonably employed the Company's controller to assist in making the estimated payments of tax, and in doing so, did not delegate his obligation to pay tax; (3) provided credible and undisputed evidence of his good payment history and intent to timely pay the tax due, (4) diligently reviewed the Company's bank statements and determined that the payments due to respondent had been paid, (5) timely paid the majority of the tax due for the year at issue following the sale of the Company. Despite appellant's exercise of ordinary business care and prudence, the payment error occurred during a period of chaotic sales negotiations of the Company and resulted in underpayment of approximately 10 percent of the tax due, meaning that it was more difficult to detect. The payment error provided no economic benefit to appellant and appellant promptly paid the unpaid tax after respondent notified him of the underpaid amount.

HOLDING

Appellant has established reasonable cause for the late payment of tax of $2,440,000.

DISPOSITION

Respondent's action is modified to recalculate the late payment penalty based upon the untimely payment of tax of $259,731.

Signed by:
Seth Elsom
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Seth Elsom
Hearing Officer

We concur:

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Teresa A. Stanley
Administrative Law Judge

Signed by:
Greg Turner
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Greg Turner
Administrative Law Judge

Date Issued: 1/21/2026