

OFFICE OF TAX APPEALS ¹
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18011781
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BARBARA L. HAYNES) Date Issued: August 27, 2018
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OPINION

Representing the Parties:

For Appellant: Barbara L. Haynes
For Respondent: Noel Garcia, Graduate Student Assistant

G. THOMPSON, Administrative Law Judge: Pursuant to Revenue and Taxation Code section 19324,² Barbara L. Haynes (appellant) appeals an action by the Franchise Tax Board (FTB or respondent) denying her claim for refund in the amount of \$2,400 for the 2014 tax year.

Appellant waived her right to an oral hearing and therefore the matter is being decided based on the written record.

ISSUE

Whether appellant has established that her failure to timely file a tax return for the 2014 tax year was due to reasonable cause and was not due to willful neglect.

FACTUAL FINDINGS

1. On May 8, 2015, appellant made a payment of \$9,783 for the 2014 tax year, which the FTB processed on May 15, 2015. The payment satisfied the tax and self-assessed penalty for underpayment of estimated tax that appellant reported on the tax return she subsequently filed.

¹ Pursuant to Assembly Bill 102, The Taxpayer Transparency and Fairness Act of 2017, and Assembly Bill 131 (2017-18 Reg. Sess.), the duty of processing administrative appeals for corporate franchise and income taxes was transferred from the California State Board of Equalization to the newly created Office of Tax Appeals.

² Unless otherwise indicated, all statutory references are to sections of the Revenue and Taxation Code.

2. On February 22, 2016, appellant filed her 2014 California income tax return, reporting \$9,600 in tax due and a self-assessed penalty of \$183 for underpayment of estimated tax.
3. The FTB imposed a late-filing penalty of \$2,400, which represents 25 percent of appellant's reported tax of \$9,600. After receiving notice of the late-filing penalty from the FTB, appellant paid the penalty, plus applicable interest.
4. On April 4, 2016, appellant filed a claim for refund of the late-filing penalty of \$2,400, contending that her tax return was not timely filed due to an error by her accountant that resulted in her return not being properly e-filed.
5. With her claim for refund, appellant provided a letter dated March 22, 2016, from Brian Borts, a Chartered Public Accountant from Toronto, Canada. In the letter, Mr. Borts states that his office began using new tax software and e-filing tax returns in the United States for the first time in early 2015. According to Mr. Borts, due to his office's inexperience in using the new software, appellant's federal and California returns were uploaded, but were never actually released for e-filing on the intended date of April 15, 2015.
6. On November 21, 2016, the FTB sent correspondence to appellant denying her claim for refund based on the FTB's determination that she had not demonstrated reasonable cause for the late filing of her 2014 return. Appellant timely appealed the FTB's denial of her claim for refund.

DISCUSSION

California imposes a penalty for the failure to file a return on or before the due date, unless it is shown that the late filing is due to reasonable cause and not due to willful neglect. (§ 19131.) The taxpayer has the burden of establishing reasonable cause. (*Appeal of Michael E. Myers*, 2001-SBE-001, May 31, 2001.)³ As a general matter, in order for a taxpayer to establish that a failure to act was due to reasonable cause, the taxpayer must show that the failure occurred despite the exercise of ordinary business care and prudence, or that cause existed as would prompt an ordinarily intelligent and prudent businessman to have so acted under similar circumstances. (*Appeal of Howard G. and Mary Tons*, 79-SBE-027, Jan. 9, 1979.)

In addition, each taxpayer has a personal, non-delegable obligation to file a tax return by

³ Precedential opinions of the Board of Equalization, designated by "SBE" in the citation, may be found on the Board of Equalization's website at www.boe.ca.gov/legal/legalopcont.htm.

the due date. (*United States v. Boyle* (1985) 469 U.S. 241, 252 (*Boyle*)). A taxpayer's reliance on an agent to timely file a federal return does not constitute reasonable cause for filing late. (*Id.*) The courts have consistently applied the rule set forth by the Supreme Court in *Boyle*, even in circumstances where a taxpayer acted prudently in dealing with its agent or employee. (See, e.g., *Kimdun Inc. v. United States* (C.D. Cal. 2016) 202 F.Supp.3d 1136, 1144-1146 [finding that reliance on payroll service to make payments was not sufficient to establish reasonable cause under *Boyle*]; *Conklin Bros. of Santa Rosa Inc. v. United States* (9th Cir. 1993) 986 F.2d 315 [finding that reliance on taxpayer's controller to make payments was not sufficient to establish reasonable cause].)

Here, appellant did not file her 2014 return until February 22, 2016, which is more than 10 months after the original due date and more than four months after the extended due date. Therefore, the late-filing penalty applies unless appellant can show that she had reasonable cause for filing the return late.

As noted above, reliance on an agent, such as a tax preparer, to timely file a tax return does not constitute reasonable cause. (See *Boyle, supra*, 469 U.S. 241.) Therefore, appellant's stated reliance on her accountant to timely file a California personal income tax return does not constitute reasonable cause for a late filing.

Appellant has asked for a "refund for penalties incurred after the date my payment was received due to the e-filing error." We note that appellant submitted payment of the tax due on May 8, 2015, shortly after the due date of appellant's 2014 tax return, but nine months before appellant actually filed that return. While we appreciate appellant's effort to satisfy her tax obligations, payment of tax after the due date does not reduce the amount of the late-filing penalty. Under Section 19131(c), the late-filing penalty (of 5 percent for each month or portion thereof the return is late, up to a maximum of 25 percent) is computed based upon the amount of tax required to be shown on the return, reduced only by (i) *timely* paid tax amounts, and (ii) credits against the tax which may be claimed on the return. Since appellant's tax payment was made late, we may not take that payment into account in computing the amount of the late-filing penalty. (*Appeal of Mary Kay Cosmetics, Inc.*, 81-SBE-042, May 19, 1981.)

HOLDING


Appellant has not established that her failure to timely file a tax return for the 2014 tax year was due to reasonable cause and was not due to willful neglect. As such, appellant is liable for the late-filing penalty.


DISPOSITION

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

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Grant S. Thompson
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Grant S. Thompson
Administrative Law Judge

We concur:

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Tommy Leung
Administrative Law Judge

DocuSigned by:

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Teresa A. Stanley
Administrative Law Judge