

3. Appellant filed an amended tax return for 2014, which incorporated the effect of the examination of the 2012 and 2013 tax years and resulted in an increase in tax of \$144,760. Appellant paid the balance on February 23, 2017.
4. On June 19, 2017, respondent issued a notice to appellant, which included the late-filing filing penalty of \$24,613.25² and statutory interest.
5. Appellant paid the balance on July 27, 2017, and filed a claim for refund for the late-filing penalty. Appellant argued that it relied on its third-party preparer to e-file the return timely, but that the preparer failed to do so. Appellant states that it immediately filed the return and acted promptly to resolve the outstanding filing once discovered.
6. On September 15, 2017, respondent denied the claim for refund.
7. This timely appeal followed.

DISCUSSION

A corporation is required to file its tax return on or before the 15th day of the third month, or on or before the extended due date of the 15th day of the tenth month following the close of the tax year. (§ 18601.) Here, appellant's 2014 return was due no later than March 15, 2015 (without extension), or October 15, 2015 (under the extended due date). Appellant filed its 2014 return on December 29, 2016. As such, appellant's 2014 California return was filed late.

A late-filing penalty will be imposed under Section 19131 when a taxpayer fails to file a tax return on or before its due date, unless the taxpayer establishes that the late filing was due to reasonable cause and was not due to willful neglect. The late-filing penalty under Section 19131 is calculated as five percent of the tax due for each month that a tax return is not filed after it is due (determined without regard to any extension of time for filing the return), not to exceed 25 percent of the tax. (§ 19131(a).) Here, appellant filed its 2014 return on December 29, 2016, more than 21 months late. The penalty was properly calculated at the maximum rate of 25 percent, totaling \$24,813.25.

To establish reasonable cause for failing to file a timely return, a 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

²The amount of the penalty was subsequently recalculated to \$24,813.25 after adding a \$200 penalty for appellant's subsidiary. Though appellant only listed \$24,613.25 as the refund amount on their claim for refund, respondent treated the claim as being for the aggregated penalty amount.

under similar circumstances. (*Appeal of Howard G. and Mary Tons*, 79-SBE-027, Jan. 9, 1979.)³ The burden is on the taxpayer to prove that the difficulties experienced prevented the taxpayer from filing a timely return. (*Appeal of David and Marilee Duff*, 2001-SBE-007, Dec. 20, 2001.) Ignorance of the law does not excuse a taxpayer's failure to comply with statutory requirements. (*Appeal of Diebold, Inc.*, 83-SBE-002, Jan. 3, 1983.)

It may be reasonable for a taxpayer to rely on the advice of an accountant or an attorney when that accountant or attorney advises a taxpayer as to a matter of tax law. However, one does not need to be a tax expert to know that tax returns have fixed filing dates and taxes must be paid when due; and a taxpayer's reliance on an accountant or attorney cannot be a substitute for compliance with an unambiguous statute. (*United States v. Boyle* (1985) 469 U.S. 241, 251-252.) Each taxpayer has a personal, non-delegable obligation to file a tax return by the due date. (*Appeal of Thomas K. and Gail G. Boehme*, 85-SBE-134, Nov. 6, 1985; *Appeal of Roger D. and Mary Miller*, 86-SBE-057, Mar. 4, 1986.)

Here, appellant contends that it relied on its third-party tax preparer to file its return. A taxpayer's reliance on an accountant or a tax attorney to file the return by the due date is not reasonable cause. Appellant had a non-delegable duty to file its tax return and pay the taxes due by the due date. Appellant states that there is a timely date stamp on the original return, but that the third-party tax preparer failed to submit the electronic file to respondent. The date stamp is not evidence that the return was actually filed with respondent. Furthermore, no evidence has been provided showing that appellant took any action to ensure that its return was timely filed, such as by contacting its preparer before the filing date had passed to confirm that the return had been e-filed successfully. Accordingly, we find that appellant has not established that its failure to timely file was due to reasonable cause.

HOLDING

Appellant has not shown it is entitled to abatement of the late-filing penalty.

³ BOE's precedential decisions, designated by "SBE," may be found on the BOE's website: <www.boe.ca.gov/legal/legalopcont.htm>.

DISPOSITION

Respondent's action in denying appellant's claim for refund is sustained in full.

DocuSigned by:
Sara A. Hosey
6D3FE4A0CA514E7...
Sara A. Hosey
Administrative Law Judge

We concur:

DocuSigned by:
John O. Johnson
484A85964FFD4CE...
John O. Johnson
Administrative Law Judge

DocuSigned by:
Daniel K. Cho
9CAF796C88DE4A5...
Daniel K. Cho
Administrative Law Judge