

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18042705
MARK E. URNESS AND CANDACE L.) Date Issued: January 30, 2019
URNESS)
_____)

OPINION

Representing the Parties:

For Appellants: Teresa L. Pulliam
For Respondent: Eric A. Yadao, Tax Counsel

D. BRAMHALL, Administrative Law Judge: Pursuant to Revenue and Taxation Code section 19324,¹ Mark E. and Candace L. Urness, (appellants) appeal an action by the Franchise Tax Board (FTB) denying appellants’ claim for refund of \$9,926.93² for the 2015 tax year.

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

ISSUE

Have appellants established reasonable cause for the late payment of taxes for tax year 2015?

FACTUAL FINDINGS

1. Appellants timely filed their joint California Nonresident Income Tax Return (Form 540NR) for the 2015 tax year on October 15, 2016, reporting a tax liability of \$103,452, which they paid with their return.

¹ Unless otherwise indicated, all statutory references (“section” or “§”) are to sections of the Revenue and Taxation Code.

² The appeal contests the assessed late-payment penalty in the amount of \$8,276.16 and corresponding interest. The appeal amount includes statutory interest on the delinquent tax and penalty payment. Interest on the delinquent tax has not been contested by appellants. FTB has acknowledged that if the penalty is abated, the interest attributable to the penalty will also be refunded.

2. Thereafter, FTB issued a Notice of Tax Return Change on November 7, 2016, imposing a late-payment penalty of \$8,276.16, plus statutory interest. When the balance remained unpaid, FTB issued an Income Tax Due Notice on December 27, 2016, advising appellants to pay the balance due of \$9,879.99 (penalty plus interest of \$1,603.83) within 15 days.
3. FTB issued a Final Notice Before Levy and Lien on March 1, 2017.
4. Appellants contacted FTB by telephone on March 9, 2017, stating they had not received a Schedule K-1 indicating California-sourced income until September 2016 and therefore did not know tax was due on April 15, 2016. Further, appellants asserted that 2015 was the first year they had been taxpayers in California. Appellants further stated they would send correspondence which would include: information they believed their Certified Public Accountant (CPA) had previously sent;³ and a reasonable cause claim for refund.
5. Appellants paid the balance due on March 9, 2017.
6. Appellants filed FTB Form 2917, Reasonable Cause – Claim for Refund, on April 11, 2017.
7. FTB denied appellants' claim, and this timely appeal followed.

DISCUSSION

The Revenue and Taxation Code also imposes a late-payment penalty for a taxpayer's failure to pay the amount of tax shown on a return before the due date. (§ 19132(a)(1).) The late-payment penalty is the sum of two amounts that may not exceed 25 percent of the unpaid tax. (§ 19132(a)(2).) The first amount is five percent of the tax that remained unpaid as of the due date. (§ 19132(a)(2)(A).) The second amount is .5 percent of the unpaid tax balance per month for each month, or portion of a month, that the tax remains unpaid after the due date, not to exceed 40 months. (§ 19132(a)(2)(B).) For these purposes, the due date for payment of the tax is determined without regard to any extension of time to file the return. (§ 19001.)

The late-payment penalty under section 19132 will be abated if it is established that the late payment was attributable to reasonable cause and not willful neglect. (§ 19132(a).) Ignorance of one's tax filing and payment requirements does not constitute reasonable cause for failing to comply with those requirements. (*Appeal of Diebold, Inc.*, 83- SBE-002, Jan. 3,

³ Appellants asserted that there had been a prior phone call and two letters sent from their CPA to FTB, but FTB's records did not indicate a phone call or any correspondence.

1983.)⁴ When FTB imposes a penalty for the late payment of tax, the law presumes that the penalty was imposed correctly. (*Appeal of Scott*, 82-SBE-249, Oct. 14, 1982.) The burden of proof is on the taxpayer to show that the failure to make a timely payment was the result of reasonable cause and not due to willful neglect, and the late payment occurred despite the exercise of ordinary business care and prudence. (*Appeal of Sleight*, 83-SBE-244, Oct. 26, 1983; *Appeal of Scott*, *supra*.)

Some examples of circumstances that have been found not to constitute reasonable cause for purposes of penalty abatement include: a taxpayer's discovery of reportable income after the original due date (*Appeal of Elixir Industries*, 83-SBE-248, Dec. 14, 1983), a taxpayer's difficulty in obtaining necessary information (*Appeal of Campbell*, 81R-SBE-633, Oct. 9, 1985), the complexity of the tax computations necessary to complete a return (*Appeal of Incom International, Inc.*, 82-SBE-053, Mar. 31, 1982), a taxpayer's difficulty in resolving accounting problems (*Appeal of Cerwin-Vega International*, 78-SBE-070, Aug. 15, 1978), a taxpayer's difficulty in determining or estimating income with exactitude (*Appeal of Sleight*, *supra*; *Appeal of Avco Financial Services, Inc.*, 79-SBE-084, May 9, 1979), a taxpayer's unresolved business matters (*Appeal of Bild Industries, Inc.*, 82-SBE-212, Sept. 21, 1982), and the failure of the taxpayer's accountant to properly account for income in a timely manner (*Appeal of Scott*, *supra*).

Appellants have not contested that their 2015 tax payment was late, or that the penalty at issue was properly computed. Rather, they have merely argued that their late payment was attributable to reasonable cause and not willful neglect.⁵ Their claim for refund and appeal assert that appellant Mr. Urness owned an Idaho business that entered into a merger agreement with Go Wireless Holdings, Inc. (Go Wireless), an S corporation, during 2015 and had never filed a California tax return previously. Appellants state that Mr. Urness received a 16.63 percent interest in Go Wireless in the merger. It is alleged that Mr. Urness inquired several times as to the taxable consequences of the merger from the Chief Financial Officer of the new (merged) company, who was uncooperative. As a result, appellants assert that they were not aware of

⁴ Published decisions of the Board of Equalization, designated by "SBE" in the citation, are available on that Board's website at: <<http://www.boe.ca.gov/legal/legalopcont.htm>>.

⁵ A taxpayer must show both conditions for the abatement of a late-payment penalty. Because we find that appellant has not established reasonable cause, we do not address the willful neglect issue.

realizing any California income until they received a final Form K-1 from Go Wireless in October 2016.⁶

During the refund claim review process, FTB requested various types of supporting documentation related to Mr. Urness's diligence prior to the payment deadline. Appellants submitted to FTB correspondence from their CPA with attached copies of emails affirming that Go Wireless K-1 information was received on October 6, 2017.⁷ However, the relevant emails appear to be dated May and October 2017, after the due date for a timely payment and thus not indicative of appellants' diligence prior to the due date. FTB invited appellants to provide a statement under penalty of perjury outlining the steps they took prior to payment deadline to determine their California tax liability. Rather than providing a statement, appellants' CPA stated there could be "no outlining the steps he took" because he did not even know about this income.⁸ As in *Appeal of Campbell, supra*, appellants have not provided evidence showing that, prior to the payment due date, they attempted to estimate the amount of tax they would owe.⁹ Accordingly, they have not met their burden of establishing reasonable cause.

Based on the foregoing, we find that appellants have not met their burden of proof to establish reasonable cause for the late payment of their 2015 California taxes. As noted, the various assertions by appellants—difficulty in obtaining financial information, the late notification of California source income, lack of knowledge of a California filing requirement—do not establish reasonable cause where the taxpayer does not show reasonable efforts were made prior to the due date to determine the amount of tax owed. While reasonable diligence to

⁶ Appellants allege they were first provided a draft Go Wireless K-1 in September 2017 and the revised and final K-1 in October.

⁷ We note that most of appellant's documentation in this appeal comes from documentation appellants submitted to FTB and provided as exhibits in this appeal by FTB. The appeal record submitted by appellants consists of unsupported assertions.

⁸ According to appellants, Go Wireless received income from many states during 2015 and received significantly more income from California (approximately 22 percent) than from any other state. As Mr. Urness chose to merge his company into Go Wireless and become a substantial shareholder in Go Wireless, Mr. Urness presumably received information about the business of Go Wireless, was likely to have been generally aware that Go Wireless did business in many states and could have requested information to estimate state tax obligations. However, there is no documented evidence to show that, prior to the due date, appellants made any such inquiries.

⁹ Appellants make note of a significant extension payment to Idaho as evidence of diligence; however, we view such a payment as consistent with being residents of that state rather than any diligence in sourcing their income from various states.

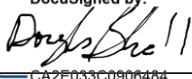
establish whether tax is owed, undertaken prior to the payment due date, may serve as a basis for finding reasonable cause, the evidence in this case does not establish such an effort.

HOLDING

Appellants have not established that their failure to make a timely payment of tax for the 2015 tax year was due to reasonable cause.

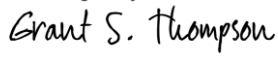
DISPOSITION

FTB's action in denying appellants' claim for refund for the 2015 tax year is sustained.


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Douglas Bramhall
Administrative Law Judge

We concur:

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Grant S. Thompson
Administrative Law Judge

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Michael F. Geary
Administrative Law Judge