

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
CAROL A. FAST

) OTA Case No. 18032434
)
) Date Issued: February 27, 2019
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)
)

OPINION

Representing the Parties:

For Appellant: Carol A. Fast, Taxpayer

For Respondent: Joel M. Smith, Tax Counsel

KWEE, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, Carol Fast (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing \$611 in additional tax, a late-filing penalty of \$152.75, plus applicable interest, for the 2015 tax year. This matter is being decided based on the written record because appellant waived the right to an oral hearing.

ISSUES

1. Whether appellant established that FTB’s proposed assessment is erroneous or otherwise incorrect.
2. Whether appellant established a basis for abating the late-filing penalty.

FACTUAL FINDINGS

1. On or around February 17, 2016, appellant, a California resident, filed a federal tax return for the 2015 tax year. On the return, appellant reported adjusted gross income of \$40,621. Appellant failed to timely file a 2015 California income tax return.
2. On April 5, 2017, FTB mailed appellant a Request for Tax Return, requiring appellant to file her 2015 tax return, send a copy of a previously filed return, or explain why no return was required by May 10, 2017. On or around May 10, 2017, appellant responded reporting that she was a California resident and earned \$40,621 in “wages and/or tips”

during 2015. Appellant explained to FTB that she was unsure if she was required to file a state tax return. Appellant also reported she was single, under age 65, and had no dependents. In support, appellant provided tax forms documenting her income for the year, a copy of her federal tax return, and a federal tax return summary page from her tax preparer, H&R Block. Appellant's federal return shows that appellant reported \$40,621 in taxable distributions from pensions and annuities during 2015.

3. FTB responded by letter dated June 14, 2017, stating that it had determined that appellant had a filing requirement, and requesting that she file a 2015 state tax return.
4. On or around June 26, 2017, appellant responded by letter stating that no California income taxes had been withheld from her during 2015.
5. FTB issued a Notice of Proposed Assessment (NPA) on July 31, 2017, proposing to assess tax of \$611, a late-filing penalty of \$152.75, and interest. The NPA allowed a credit for \$438 in state tax withholdings.
6. On or around August 15, 2017, appellant protested the NPA on the basis that she should not be penalized because the persons paying her the income at issue did not withhold any state income taxes. Appellant also explained that her husband took care of all the finances before he passed away and she had no experience in this area.
7. FTB issued a Notice of Action (NOA) on November 15, 2017, affirming the NPA.
8. On November 18, 2017, appellant timely appealed the NOA. Her appeal consisted of a copy of the NOA and a 2015 California Resident Income Tax Return, reporting an overpayment of \$437.¹ Appellant offered no further explanation for her appeal.
9. In a subsequent filing dated April 3, 2018, appellant contended that \$437 in state taxes had been withheld from her income during 2015. In support, appellant submitted a 1099-R reporting \$437.78 in state tax withheld.

DISCUSSION

Issue 1: Whether appellant established error in the proposed assessment.

California's personal income tax is imposed on the entire taxable income of a California resident. (R&TC, § 17041(a).) Every individual subject to this tax with income over a specified

¹ On the return, appellant reported gross income of \$0, a state tax liability of \$1,271, and an overpayment of \$437. These numbers do not add up because the return was not completed correctly. It is unclear how appellant calculated her tax liability and overpayment of \$437.

amount must file a tax return with FTB. (R&TC, § 18501(a).) In the case of a single individual under the age of 65, with no dependents, the filing threshold for 2015 was adjusted gross income of at least \$13,005, or gross income of at least \$16,256. (R&TC, § 18501(a), (b).) Gross income means all income from whatever source derived, and includes income from annuities, pensions, and distributions from retirement accounts, unless specifically excluded. (R&TC, §§ 17071, 17085; 26 U.S.C.A. (IRC), §§ 61(a)(8)-(10), 72, 408(d).)

In the case of a failure to file a return, FTB may issue a proposed tax assessment based on an income estimate and may make such estimate using any available information. (R&TC, § 19087(a).) FTB's proposed assessment is presumed correct once FTB shows a reasonable and rational basis for the estimation. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509; *Appeal of Michael E. Myers*, 2001-SBE-001, May 31, 2001.)² Here, appellant failed to file a return. Nevertheless, in a letter responding to FTB's request for a tax return, appellant reported that she earned \$40,621 during 2015. This amount corresponds to taxable items of gross income reported on her federal tax return for 2015, and to the tax forms that she provided to FTB during her protest. Therefore, we find that FTB's income estimate of \$40,621 was both reasonable and rational. Appellant did not present any arguments or evidence to suggest that FTB's proposed assessment is incorrect. Although appellant claims entitlement to withholding credits of \$437, the NPA reflects that FTB already allowed withholding credits of \$438. Therefore, we find that appellant failed to establish error in FTB's tax assessment.

Issue 2: Whether appellant established a basis for abatement of the late-filing penalty.

Section 19131 imposes a penalty for the failure to timely file a return, unless it is shown that the late filing is due to reasonable cause and not willful neglect. (R&TC, § 19131(a).) The amount of the penalty is five percent of the tax due, after allowing for timely payments, for every month or fraction of a month that the return is late, up to a maximum 25 percent penalty. (*Ibid.*) The penalty will be abated if a taxpayer establishes that the failure to file was due to reasonable cause and not willful neglect. (*Ibid.*)

A taxpayer seeking to establish that a failure to act was due to reasonable cause has the burden proving that the failure occurred despite the exercise of ordinary business care and

² Precedential opinions of the State Board of Equalization (board), designated by "SBE" in the citation, may be cited as precedential authority to the Office of Tax Appeals unless a panel removes, in whole or in part, the precedential status of the opinion. The board's precedential opinions are viewable on its website: <www.boe.ca.gov/legal/legalopcont.htm>.

prudence, or that cause existed as would prompt an ordinarily intelligent and prudent businessman to have so acted under similar circumstances. (*United States v. Boyle* (1985) 469 U.S. 214, 245; *Appeal of Michael E. Myers, supra.*) Furthermore, an allegation that a taxpayer was unable to timely file a return, in the absence of evidence establishing why the taxpayer was unable to timely file, and of the continuity of the taxpayer's efforts to file the return from the due date until the date the return was late-filed, does not constitute reasonable cause. (*Raymond J. Beran, et. al. v. Commissioner*, T.C. Memo. 1980-119.)

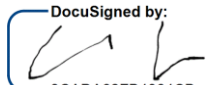
Here, FTB correctly asserts that the late-filing penalty applies at the maximum rate of 25 percent, because appellant failed to timely file a return as of the date of the NPA, which was five or more months after the due date of the 2015 tax return. Appellant requests abatement on the basis that she did not know she had a filing requirement, and that she is unfamiliar with her tax filing obligations. Nevertheless, ignorance of the law does not constitute reasonable cause for failing to file a timely return. (*Appeal of J. Morris and Leila G. Forbes*, 67-SBE-042, Aug. 7, 1967). Therefore, we find appellant's financial inexperience does not constitute reasonable cause for failing to timely file her 2015 return. Furthermore, section 19131 imposes on the taxpayer a duty to file a return by the due date. This duty is a personal, non-delegable, responsibility of the taxpayer. (*United States v. Boyle* (1985) 469 U.S. 241.) The record indicates that appellant was in fact able to timely file her federal tax return, and that she used a tax preparer to do so, H&R Block. Thus, it appears appellant was generally aware of her tax filing obligations and that she could use a tax preparer to assist her with those obligations. Considering appellant timely filed her 2015 federal return, it appears that appellant's personal circumstances did not otherwise prevent her from timely filing a 2015 state tax return. Therefore, the record does not support a finding that circumstances constituting reasonable cause prevented appellant from timely filing her state tax return.

HOLDINGS

1. Appellant has not established error in the proposed assessment.
2. Appellant has not established a basis for abating the late-filing penalty.

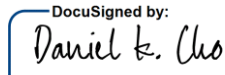
DISPOSITION

FTB's action is sustained.

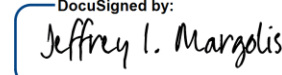
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Andrew J. Kwee
Administrative Law Judge

We concur:

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Daniel K. Cho
Administrative Law Judge

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Jeffrey I. Margolis
Administrative Law Judge