

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
LEVY & RYAN

) OTA Case No. 18042662
)
) Date Issued: March 13, 2019
)
)
)

OPINION

Representing the Parties:

For Appellant: Robert D. Levy

For Respondent: Connor Meggs, Grad. Student Asst.

J. MARGOLIS, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324,¹ Levy & Ryan (appellant) appeals an action by the Franchise Tax Board (FTB) denying its claim for refund of a \$432 late-filing penalty imposed under section 19172 for appellant’s short-tax year ending January 31, 2016.

Appellant waived its right to an oral hearing; therefore, this matter is being decided based on the written record.

ISSUE

Whether the section 19172 late-filing penalty should be abated.

FACTUAL FINDINGS

1. Appellant is a partnership consisting of two partners.
2. On July 25, 2017, appellant filed a California partnership return of income, Form 565, for a short-year period that began on January 1, 2016 and ended on January 31, 2016. Appellant indicated that the return was its “final return.”
3. Because appellant’s return was filed late (more than a year after its due date of April 15, 2016), FTB assessed a \$432 late-filing penalty under section 19172.

¹ All statutory references (“section” or “§”) are to sections of the California Revenue and Taxation Code.

4. Appellant paid the penalty and filed a claim for refund. In the claim, appellant asked that the late-filing penalty be abated because:

the managing partner suffered from extended illness requiring repeated and long term hospitalizations in 2016 and 2017. The taxpayer did not realize the return would be filed for short year 2016 and thus would have an earlier due date. The taxpayer did file a federal extension for the 2016 year under the assumption that the return was for the full calendar year.

Appellant also noted that the late filing was a “singular mistake” and that appellant has a “spotless record of tax filing and payments.”

5. FTB denied the claim and appellant filed this timely appeal.

DISCUSSION

Appellant’s return for the period ending January 31, 2016 was due by the fifteenth day of the third month after the close of the tax year, that is, by April 15, 2016. (R&TC, § 18633.) Appellant did not file its return, however, until July 25, 2017, over 14 months late.

Section 19172(a) provides in part that if any partnership required to file a return under section 18633 for any taxable year fails to file the return at the prescribed time (determined with regard to any extension of time for filing), that partnership shall be liable for a penalty determined under section 19172(b), for each month (or fraction of each month) during which that failure continues (but not to exceed 12 months), unless it is shown that the failure is due to reasonable cause. To establish reasonable cause, a taxpayer must show that its failure to file a timely return occurred despite the exercise of ordinary business care and prudence. (*Appeal of Tons*, 79-SBE-027, Jan. 9, 1979.)

Appellant contends that reasonable cause for the late filing of its return existed due to the extended illness and repeated and long-term hospitalization of its managing partner during 2016 and 2017.² The serious illness of the taxpayer (or a member of the taxpayer’s immediate family) is a circumstance that the courts have acknowledged *may* constitute reasonable cause for penalty abatement. (*Appeal of Halaburka*, 85-SBE-025, Apr. 9, 1985.) However, the taxpayer bears the burden of proof on this issue. (*Appeal of Scott*, 82-SBE-249, Oct. 14, 1982.) In order for serious illness to constitute reasonable cause to excuse the late filing of a return, the illness must have

² Appellant’s challenge is to the imposition of the penalty, not to whether it was properly computed.

continuously prevented the taxpayer from filing a tax return during the relevant period. (*Appeal of Halaburka, supra; Appeal of Seaman, 75-SBE-080, Dec. 16, 1975.*)

Here, however, appellant has provided no documentary evidence (other than unsupported statements in its appeal letter) as to the extent to which appellant’s managing partner was continuously precluded, by illness, from timely filing its return for the period at issue.³ Appellant’s unsupported allegations are insufficient to carry the burden of proof. (*Appeal of Magidow, 82-SBE-274, Nov. 17, 1982.*)

Appellant also asserts that it did not know, until after the close of the 2016 calendar year, that it was required to file a short-year “final return” for the period ending January 31, 2016. However, ignorance of the law generally is not an excuse for failing to file a return. (*Appeal of Forbes, 67-SBE-042, Aug. 7, 1967.*) Appellant has provided neither argument nor evidence as to why it could not have determined that it was liable for filing a short-year final return for the period at issue.

Finally, appellant points to its exemplary history of making timely tax filings and payments as a basis for granting “compassion” and abating the \$432 late-filing penalty. Although the IRS has a First Time Penalty Abatement program pursuant to which a taxpayer can be relieved of a federal late-filing penalty based on previous good filing behavior (rather than having to establish reasonable cause), neither the California Legislature nor the FTB have adopted a comparable penalty abatement program. Under California law, a taxpayer must establish that the late filing was due to reasonable cause for the late-filing penalty to be abated. Because appellant has not established reasonable cause, we sustain FTB’s imposition of the penalty.

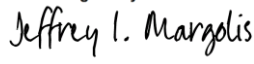
HOLDING

Appellant has not established that the late filing of its return for the period at issue was attributable to reasonable cause.

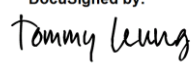
³ Appellant also has not shown why appellant’s other partner could not have fulfilled the partnership’s filing obligation.


DISPOSITION

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

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Jeffrey I. Margolis
Administrative Law Judge

We concur:

DocuSigned by:

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Tommy Leung
Administrative Law Judge

DocuSigned by:

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Andrew Kwee
Administrative Law Judge