

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
BRIAN RUANE

) OTA Case No. 18053064
)
) Date Issued: May 10, 2019
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)
)

OPINION

Representing the Parties:

For Appellant: Thomas Lawrence, Thomas Lawrence & Company, P.C.
Ann Meistrell, Thomas Lawrence & Company, P.C.

For Respondent (FTB): Brad J. Coutinho, Tax Counsel
Anne Mazur, Specialist

G. THOMPSON, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, Brian Ruane (appellant) appeals an action by FTB proposing \$8,513.11 of additional tax, a late-filing penalty of \$2,128.28, and applicable interest, for the 2015 tax year.

Appellant waived his right to an oral hearing; therefore, the matter is being decided based on the written record.¹

ISSUES

- 1. Whether appellant has shown that he had reasonable cause for not timely filing his 2015 California tax return.
- 2. Whether appellant has shown that the proposed assessment should be reduced.

FACTUAL FINDINGS

- 1. Appellant was not a resident of California. During the 2010 to 2015 tax years, appellant was a shareholder of American Linehaul Corporation (Linehaul), an S corporation that

¹ Appellant initially requested an oral hearing but later withdrew the request and requested the matter be decided based on the written record.

did business in California. As a shareholder of Linehaul, appellant earned California source income that Linehaul reported on Schedules K-1.

2. For tax years 2012 to 2014, appellant filed nonresident California income tax returns reporting California source income from Linehaul.²
3. For the year at issue, the 2015 tax year, appellant again earned California source income from Linehaul; however, he failed to file a timely California income tax return.
4. Through a notice dated May 31, 2017, FTB requested that appellant file a tax return by July 5, 2017. However, appellant failed to file a tax return by the July 5, 2017 deadline.
5. As a result, FTB issued a Notice of Proposed Assessment (NPA) showing the additional tax and late-filing penalty stated above. The proposed assessment was based on \$127,217 of California source income and reflected a single filing status and one exemption.³ Following protest proceedings, FTB affirmed the NPA.
6. On or about April 23, 2018, appellant filed a California nonresident income tax return for the 2015 tax year. The return reports federal adjusted gross income (AGI) from all sources of \$372,077, a California subtraction of \$190,096, California itemized deductions of \$60,037, California AGI of zero, and California tax of zero. The return also claims married filing jointly status and a single dependent exemption.
7. On or about the date that appellant filed his 2015 California tax return, appellant also filed this timely appeal. On appeal, appellant initially argued that the assessment was incorrect because he was a resident of New Jersey, performed services in New Jersey, and reported the income to the State of New Jersey.
8. FTB then filed a brief explaining that the income was based on appellant's share of California source income as a shareholder of Linehaul. In response, appellant acknowledged the error in reporting and requested abatement of the late-filing penalty.
9. At a telephonic conference held on February 28, 2019, the parties agreed that the sole issue on appeal was whether appellant had shown reasonable cause for filing his tax return late.

² The appeal record does not indicate whether appellant also reported income from Linehaul for the 2010 and 2011 tax years.

³ The NPA reflected that the income was from a corporation other than Linehaul. However, during protest, FTB clarified that the NPA should have referred to Linehaul.

10. On March 8, 2019, appellant's representative submitted correspondence stating that it prepared a tax return using tax preparation software and it showed no tax due from California. Appellant's representative said he did not understand why his calculations showed no amount due while FTB's assessment showed \$8,622 in additional tax plus a late-filing penalty. Appellant's representative claimed that FTB's assessment was based on a single filing status, with no exemptions, and that appellant was married and that his return showed three dependents.⁴
11. In response, FTB argued that, because appellant's return failed to include appellant's income from Linehaul, the return is invalid and cannot be processed by FTB. FTB therefore argued that it properly calculated the assessment based on a single filing status with no dependents.

DISCUSSION

1. Whether appellant has shown that he had reasonable cause for not timely filing his 2015 California tax return.

R&TC section 19131 imposes a late-filing penalty when a taxpayer fails to file a tax return by the due date, unless the failure was due to reasonable cause and not due to willful neglect. To establish reasonable cause, the taxpayer must show the failure to timely file returns occurred despite the exercise of "ordinary business care and prudence." (*Appeal of Tons (79-SBE-027)* 1979 WL 4068.)

Appellant initially argued that the income was not taxable by California because it was received for services performed outside of California. This argument has no basis as the income was appellant's share of California income from his ownership interest in Linehaul. Furthermore, the argument is inconsistent with the tax returns filed by appellant for years prior to the year at issue. Despite having received and reported Schedule K-1 income from Linehaul in prior years, there is no evidence that appellant took reasonable steps, prior to the filing deadline, to determine if he had a California filing requirement for 2015. Therefore, appellant has not shown that he acted with ordinary business care and prudence.

Appellant also argues that he has a good filing history and that the failure to file a California income tax return reflected a good faith error. However, a good filing history does not

⁴ In fact, FTB allowed one exemption, and appellant's return shows only one dependent.

establish reasonable cause for filing late. The statute does not provide that the penalty may be abated if it is reasonable to abate the penalty; rather, the statute imposes the penalty unless the taxpayer shows some reasonable cause (i.e., an event or circumstance) that caused the taxpayer to file late. Appellant has not shown any such reasonable cause for the late filing.

A good faith error does not, by itself, demonstrate reasonable cause. (See *Appeal of Risser* (84-SBE-044) 1984 WL 16123 [addressing reasonable cause in the context of the late-payment penalty].) The taxpayer must show both that the failure to timely file was due to reasonable cause and that it was not due to willful neglect. (*Appeal of Tons, supra.*) Here, even if appellant acted without willful neglect, he has not established that he had reasonable cause for failing to timely file.

For the foregoing reasons, we have no legal basis to abate the late-filing penalty.

2. Whether appellant has shown that the proposed assessment should be reduced.

Late in the appeal process, appellant argued that the proposed assessment should be reduced because he and his spouse filed a late tax return reporting married filing jointly status and three dependents. As noted previously, while his late-filed tax return reported joint filing status, it claimed only one dependent.

Even if we assume for the sake of argument that the return is a valid return, it does not demonstrate that the proposed assessment should be reduced, because it does not appear to be reliable. The return reports California AGI of zero, when appellant's actual California AGI exceeded \$100,000.⁵ In addition, after filing the return, appellant's representative conceded that an error was made in appellant's tax reporting. In these circumstances, we do not find the return to be reliable evidence of appellant's actual income, deductions, filing status and exemptions.⁶

⁵ The return appears to calculate this California AGI in part by subtracting a California adjustment of \$190,096 based on an unexplained difference between federal and California law.

⁶ Also, if the proposed assessment were revised to take into account appellant's total taxable income from all sources, it appears likely that appellant's California tax rate and his tax liability would increase, even if one accepted appellant's claimed married filing jointly status and exemptions. (See R&TC, § 17041(b)(2) [requiring that a nonresident's total income from all sources be used to determine the tax rate applied to California income]; *Appeal of Boone* (93-SBE-015) 1993 WL 460748; <<https://www.ftb.ca.gov/forms/2015-California-Tax-Rates-and-Exemptions.shtml>> [imposing a marginal tax rate of 9.3% on income between \$103,060 and \$526,444].)

HOLDINGS

1. Appellant has not shown reasonable cause for failing to timely file his 2015 California tax return.
2. Appellant has not shown that the proposed assessment should be reduced.

DISPOSITION

FTB's action is sustained.

DocuSigned by:
Grant S. Thompson
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Grant S. Thompson
Administrative Law Judge

We concur:

DocuSigned by:
Jeff Angeja
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Jeffrey G. Angeja
Administrative Law Judge

DocuSigned by:
Daniel K. Cho
7B28A07A7E0A43D...
Daniel K. Cho
Administrative Law Judge