

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
JAIME SOLORZANO

) OTA Case No. 18063337
)
) Date Issued: August 26, 2019
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)
)

OPINION

Representing the Parties:

For Appellant: Tax Appeals Assistance Program (TAAP)¹

For Respondent: D’Arcy Dewey, Tax Counsel

For Office of Tax Appeals: Sarah Fassett, Tax Counsel

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Jaime Solorzano² (appellant) appeals an action by the Franchise Tax Board (FTB) denying appellant’s claim for refund for the 2016 taxable year in the amount of \$1,126.25, plus applicable interest paid.³

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

ISSUE

Did appellant demonstrate that the late filing of his 2016 tax return was due to reasonable cause and not willful neglect?

¹ Appellant filed his original appeal letter, and subsequent representation was provided by the TAAP program.

² Although appellant filed a joint California income tax return, his spouse did not join this appeal.

³ Appellant’s claim for refund includes additional tax that was assessed based on a reduction by FTB of appellant’s withholding credit (reduced by \$186). Appellant has not disputed that portion of FTB’s assessment, and we do not address it here.

FACTUAL FINDINGS

1. Appellant and his spouse (the couple) filed an untimely joint California Resident Income Tax Return (Form 540) on November 3, 2017, reporting tax due of \$4,322, which they paid on or about the date they filed the return.
2. FTB issued a Notice of Tax Return Change – Revised Balance on February 21, 2018, which reflected a reduction of withholding credits (\$186), a late-filing penalty (\$1,126.25), and interest. The notice showed a revised balance for appellant’s 2016 California tax account in the amount of \$1,452.70, which the couple paid in full.
3. The couple submitted a Reasonable Cause – Individual and Fiduciary Claim for Refund (Form 2917), asserting that they had reasonable cause for filing their return late because they dropped off their 2016 tax documents to their tax preparer and then had no communication with her until October 2017, despite their attempts to do so by phone, text, and a home visit. In October, the couple collected their tax documents and took them to a second tax preparer.
4. FTB denied the couple’s claim for refund because it determined that appellant did not establish reasonable cause for abatement of the late-filing penalty. Appellant filed this timely appeal.

DISCUSSION

California imposes a penalty for the failure to file a return on or before the due date, unless it is shown that the late filing was due to reasonable cause and not due to willful neglect. (R&TC, § 19131.) When FTB imposes a late-filing penalty, it is presumed that the penalty was imposed correctly, and the burden of proof is on the taxpayer to show that reasonable cause for the late filing of the tax return exists. (*Appeal of Beadling* (77-SBE-021) 1977 WL 3831; see generally *Todd v. McColgan* (1949) 89 Cal.App.2d 509.) To overcome the presumption of correctness attached to the penalty, appellant must provide credible and competent evidence supporting a claim of reasonable cause; otherwise the penalty cannot be abated. (*Appeal of Xie*, 2018-OTA-076P.) As a general matter, in order for a taxpayer to establish that a failure to act was due to reasonable cause, the 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 businessperson to have so acted under similar circumstances.

(*Appeal of Bieneman* (82-SBE-148) 1982 WL 11825; *Appeal of Tons* (79-SBE-027) 1979 WL 4068.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Magidow* (82-SBE-274) 1982 WL 11930.)

Here, appellant does not dispute that FTB properly assessed a late-filing penalty because the couple filed their 2016 tax return nearly seven months late, on November 3, 2017. Appellant also does not appear to contest the calculation of the late-filing penalty. The only question before us is whether appellant had reasonable cause for the late filing of his return. Appellant makes two general assertions as to why his return was filed late: 1) he relied on his tax preparer for the preparation of the return; and 2) his tax preparer held his tax documents "hostage" until October 2017, which prevented him from timely filing.

Generally, the due date for filing a tax return is April 15th of the year following the tax year. (R&TC, § 18566.) A taxpayer's failure to timely file a return is not excused by the taxpayer's reliance on an agent. (*Appeal of Boehme* (85-SBE-134) 1979 WL 4224.) "It requires no special training or effort to ascertain a deadline and make sure that it is met," and reliance on an agent is not reasonable cause for filing late. (*United States v. Boyle*, 469 U.S., 241, 252.) The courts have consistently applied the rule set forth by the United States Supreme Court in *Boyle*, even in circumstances where a taxpayer acted prudently in dealing with its agent or employee. (See *Conklin Bros. of Santa Rosa Inc. v. United States* (9th Cir. 1993) 986 F.2d 315 [finding that a taxpayer cannot rely on its agents or employees, acting within the scope of their authority, to escape responsibility for the nonperformance of nondelegable tax duties].) In addition, "[t]he negligent failure of an accountant or lawyer to *prepare* [a] taxpayer's return is not reasonable cause for a failure to timely file." (*Logan Lumber Co. v. C.I.R.* (5th Cir. 1966) 365 F.2d 846, 854, italics added.)

Here, appellant argues that because he had used his tax preparer for the preceding five years, and the preparer had previously done timely and professional work, he did not at any point know that his tax preparer had not completed his 2016 tax returns for timely filing. Appellant also stresses that his reliance on his tax preparer was for preparation of the return and not for filing the return, and that because of the complexity of tax law, appellant was not equipped to prepare his return himself, which is why he needed his tax information to find a second preparer. Appellant had a non-delegable duty to file his tax returns by the due date, regardless of what

appellant's tax preparer did or failed to do. Appellant's reliance on his tax preparer to timely prepare his returns does not constitute reasonable cause.

Appellant further asserts that he was not able to obtain his tax documents from one tax preparer to take to another preparer prior to the extended filing date. However, merely asserting difficulty in accumulating documents or other necessary information generally will not constitute reasonable cause for purposes of abating the late-filing penalty. (*Appeal of Bieneman, supra* [alleged unavailability of records]; *Appeal of Orr* (68-SBE-010) 1968 WL 1640 [lack of necessary information or documents to file].) Appellant claims that the late filing of his return falls to his tax preparer, who "held his documents hostage" until the extended due date for timely filing his 2016 return. In the absence of evidence establishing why the information was unavailable, and of the taxpayer's "continuity of his [or her] efforts to secure the necessary information," appellant's claims do not constitute reasonable cause. (*Raymond J. Beran, et al., v. Commissioner* (1980) T.C. Memo. 1980-119.)

Appellant has asserted that he made several attempts to contact his tax preparer; however, he has not established what efforts, if any, he made to replace documents or obtain the necessary tax information needed to prepare his return, such as requesting duplicate copies of Forms W-2 (Wage and Tax Statement). In the absence of evidence of the continuity of appellant's efforts to obtain the necessary documents, we have no basis upon which to find that appellant satisfied the standard of ordinary business care and prudence. (See *Appeal of Bieneman, supra.*)

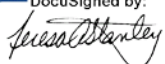
Therefore, we conclude that appellant failed to establish that his failure to timely file his 2016 personal income tax return was due to reasonable cause.

HOLDING

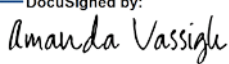
Appellant failed to establish a basis for abatement of the late-filing penalty.

DISPOSITION

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

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Teresa A. Stanley
Administrative Law Judge

We concur:

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Amanda Vassigh
Administrative Law Judge

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Daniel K. Cho
Administrative Law Judge