

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:

KEREN MAOR AND ALON MAOR

) OTA Case No. 19034500

)

) Date Issued: September 20, 2019

)

)

OPINION

Representing the Parties:

For Appellants:

Stacy J. Hoffman, CPA

For Respondent:

Diane M. Deatherage, Specialist

J. ANGEJA, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Keren and Alon Maor (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$43,785 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.

ISSUES

1. Whether appellants have established reasonable cause for the late-filing of their 2015 tax return.
2. Whether appellants have shown that they are entitled to interest abatement.

FACTUAL FINDINGS

1. FTB’s Integrated Non-Filer Compliance Program annually matches income records obtained from various reporting sources against filed tax returns to identify individuals who may not have fulfilled their legal obligation to file a California income tax return. In this case, FTB received information indicating appellants received income from Qwilt, Inc. and earned income from Wing Strategic Partners, LP, during the 2015 tax year, but FTB had no record that appellants filed a tax return for that year.

2. FTB issued appellants a Request for Tax Return dated June 15, 2017, requesting that appellants file their 2015 tax return, provide evidence that they had already filed it, or explain why no tax return was due, on or before July 19, 2017. Appellants failed to respond within the time provided.
3. FTB issued a Notice of Proposed Assessment (NPA) on August 14, 2017, which proposed to assess a tax of \$1,526, a late-filing penalty of \$381.50, plus applicable interest.
4. Appellants filed their 2015 California income tax return on October 15, 2017, reporting total tax of \$200,491. After subtracting income tax withholdings and estimated payments, appellants reported tax due of \$175,140 with a self-assessed underpayment of estimated tax penalty of \$3,282, and a total amount due of \$178,422. Appellants paid \$175,140 on October 19, 2017.
5. With their 2015 California income tax return, appellants included a form W-2 showing \$295,478 in wages received and \$23,336 in California tax withheld.
6. On October 23, 2017, FTB issued a notice of tax change to appellants' return, imposing a late-filing penalty of \$43,785, plus applicable interest and fees.
7. Subsequently, appellants paid the balance due, and timely filed a claim for refund of the late-filing penalty.
8. FTB denied appellants' claim for refund, and this timely appeal followed.

DISCUSSION

Issue 1 – Whether appellants have shown reasonable cause to abate the late-filing penalty.

R&TC section 19131 provides that a late-filing penalty shall be imposed when a taxpayer fails to file a tax return on or before its due date, unless the taxpayer establishes that the late filing was due to reasonable cause and was not due to willful neglect. The late-filing penalty is specified as 5 percent of the tax due for each month that a valid tax return is not filed after it is due (determined without regard to any extension of time for filing the return), not to exceed 25 percent of the tax. (R&TC, § 19131(a).)

When FTB imposes a late-filing penalty, the law presumes that the penalty was imposed correctly. (*Todd v. McColgan*, (1949) 89 Cal.App.2d 509, 514.) The burden is on the taxpayer to establish reasonable cause for the untimely filing. (*Appeal of Scott* (82-SBE-249) 1982 WL 11906.) To establish

reasonable cause for failing to timely file, a taxpayer must show that the failure to timely file the return 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 Tons* (79-SBE-027) 1979 WL 4068.)

As applied to situations involving illness or other personal difficulty, the standard of reasonable cause requires the taxpayer to present competent and credible proof that he or she was continuously prevented from filing a timely return. (*Appeal of Halaburka* (85-SBE-025) 1985 WL 15809.) Reasonable cause is not established when personal difficulties simply cause a taxpayer to sacrifice the timeliness of one aspect of its affairs to pursue other aspects. (*Appeal of Bryant* (83-SBE-180) 1983 WL 961596; *Appeal of Orr* (68-SBE-010) 1968 WL 1640.)

On appeal, appellants raise several contentions in support of their position. First, appellants assert that they inadvertently failed to timely file their 2015 tax return because they were preparing to move to Israel, and have historically relied on their tax preparer to file their returns. However, appellants have failed to establish facts showing how or why their preparations for the relocation continuously prevented them from filing a timely return, and therefore appellants have failed to establish that the alleged personal difficulty (i.e., relocating to another country) qualifies as reasonable cause to abate the penalty. (See *Appeal of Bryant, supra*.) Likewise, appellants' alleged reliance on their CPA to timely file their tax return does not constitute reasonable cause. (See *United States v. Boyle* (1985) 469 U.S. 241, 252.)

Second, appellants state that during 2015, they had an unusual transaction in which they sold shares of stock in Qwilt, Inc., for a price of \$1,500,500, and based on (alleged) discussions with their CPA, appellants believed that a foreign tax credit for income tax paid to Israel on this transaction would offset any taxes due in the US. Appellants appear to contend that their (alleged) reliance on their CPA's professional advice that no tax was due is reasonable cause for failing to timely file their return. The law provides that if a taxpayer relies on improper advice of an accountant or tax attorney as to a substantive matter of tax law, such as whether the taxpayer has a tax liability, failing to file a return in reliance on this advice may be considered reasonable cause if certain conditions are met. (*Rohrbaugh v. United States* (7th Cir. 1979) 611 F.2d 211, as cited in *Boyle, supra*, 469 U.S. at p. 241.) One of these conditions is whether the tax professional's advice is based on the taxpayer's full disclosure of the relevant facts and

documents.¹ To satisfy this condition, appellants must first establish that they made full disclosure of the relevant facts and documents and, additionally, that the tax professional's advice is based on this full disclosure.² Appellants have not established that they satisfied this condition, nor that they in fact received advice from their accountant not to file a California income tax return. Thus, we find that appellants have failed to meet their burden of proof on this contention.

Third, appellants assert that they acted in good faith and with ordinary business care and prudence to file their income tax return as soon as possible. However, we find that appellants' contention lacks merit, because appellants did not file their 2015 tax return until October 15, 2017, which is 18 months after the due date of the return, and 4 months after FTB's request for the tax return. Appellants have failed to establish reasonable cause for these significant delays.

Finally, appellants assert that they have a good filing and payment history and that the Internal Revenue Service (IRS) abated the penalties it had imposed against appellants, allegedly based on reasonable cause. The IRS may abate a federal late-filing penalty pursuant to an IRS policy called First Time Abate *for reasons other than reasonable cause*. Under this program, the IRS may administratively abate penalties for late payment and late filing if a taxpayer has timely filed returns and paid taxes due for the past three years. Neither the California Legislature nor FTB have adopted a comparable penalty abatement program to allow for abatement in the absence of reasonable cause, so the IRS penalty abatement and appellants' history of timely filing and paying California taxes cannot be used as a basis for abatement of the late-payment penalty at issue here. Instead, appellants must establish that their failure to timely file a 2015 tax return was due to reasonable cause and not due to willful neglect, which they have failed to do.

¹ The other condition is whether the person relied on by the taxpayer is a tax professional with competency in the subject tax law. It is unnecessary to discuss this condition because, as discussed herein, appellants fail to establish that the advice was based on full disclosure.

² At a minimum, we would expect appellants to have disclosed facts to their CPA, such as their California residency during the 2015 tax year, their receipt of at least \$295,478 in W-2 wages, and \$22,953 in California tax withholdings on that income. These facts clearly establish an obligation to file a California income tax return regardless of any possible foreign tax credit.

Issue 2 – Whether appellants have shown that they are entitled to interest abatement.

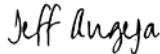
Interest is required to be assessed from the date when payment of tax is due through the date that it is paid. (R&TC, § 19101.) Imposition of interest is mandatory; it is not a penalty, but is compensation for appellants’ use of money after it should have been paid to the state. (*Appeal of Yamachi* (77-SBE-095) 1977 WL 3905.) There is no reasonable cause exception to the imposition of interest. (*Appeal of Goodwin* (97-SBE-003) 1997 WL 258474.) To obtain abatement from the imposition of interest, a taxpayer must qualify under the waiver provisions of R&TC sections 21012, 19112, or 19104. Appellants do not raise any specific arguments as to the abatement of interest, and we find no abatement is warranted under the facts as presented and applicable laws. Thus, appellants have not established any of the statutory grounds for interest abatement.

HOLDINGS


1. Appellants have not shown reasonable cause to abate the late-filing penalty.
2. Appellants have not established that they are entitled to interest abatement.


DISPOSITION

FTB’s action is sustained in full.

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 Jeffrey G. Angeja
 Administrative Law Judge

We concur:

DocuSigned by:

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 Amanda Vassigh
 Administrative Law Judge

DocuSigned by:

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 Andrew J. Kwee
 Administrative Law Judge