

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of:	) OTA Case No. 19064895
<b>WILLIAM T. JACKSON AND</b>	)
<b>MARGARET K. JACKSON</b>	) Date Issued: December 18, 2019
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**OPINION**

Representing the Parties:

For Appellants:	Donald A. Huff, CPA
For Respondent:	Anne Mazur, Specialist

K. GAST, Administrative Law Judge: Pursuant to California Revenue and Taxation Code (R&TC) section 19324(a), William T. Jackson and Margaret K. Jackson (appellants) appeal actions by respondent Franchise Tax Board (FTB) in denying their claims for refund of \$419.25 for the 2015 tax year, \$503.25 for the 2016 tax year, and \$242.50 for the 2017 tax year. Appellants waived their right to an oral hearing. Therefore, this matter is being decided based on the written record.

**ISSUE**

Whether appellants have established reasonable cause to abate the late-filing penalties.

**FACTUAL FINDINGS**

1. FTB received information from a third-party source indicating Mrs. Margaret K. Jackson (appellant-wife) earned California source income in 2015 and 2016. FTB issued to her Requests for Tax Return and Notices of Proposed Assessment for 2015 and 2016.

2. Subsequently, appellants filed untimely joint California nonresident or part-year resident income tax returns for the years at issue.<sup>1</sup> Those returns indicated that, for each year, appellant-wife earned California source income as a sole proprietor engaged in the business of “braille transcription.”
3. After processing appellants’ tax returns, FTB withdrew its proposed assessments and imposed late-filing penalties in the amounts noted above.<sup>2</sup> Appellants paid the penalties for 2015, 2016, and 2017, and then filed refund claims for these years, seeking abatement based on reasonable cause. FTB denied their claims, and this timely appeal followed.

### DISCUSSION

R&TC section 19131 imposes a penalty for the failure to file a return on or before the due date, unless it is shown that the late-filing is due to reasonable cause and not due to willful neglect. (R&TC, § 19131(a).) Appellants contend they have reasonable cause to abate the late-filing penalties because they relied on the improper advice of their accountant as to a matter of tax law. To establish such reliance, appellants must show that (1) the accountant is a tax professional with competency in the subject tax law, and (2) the accountant’s advice is based on appellants’ full disclosure of the relevant facts and documents. (*Rohrbaugh v. United States* (7th Cir. 1979) 611 F.2d 211, as cited in *United States v. Boyle* (1985) 469 U.S. 241, 244.)

In their appeal letter, which is written and signed under penalty of perjury by their representative, Mr. Donald A. Huff, appellants assert the non-filing “position taken was based on the mere solicitation rule outlined in Public Law 86-272, which [the accountant] subsequently determined to not be applicable to the taxpayer’s business activities.”<sup>3</sup> They allege they relied on

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<sup>1</sup> Those returns list a South Carolina address. Except for 2015, the 2016 and 2017 returns list both appellants as California nonresidents. The 2015 return lists Mr. William T. Jackson, appellant-husband, as a California nonresident, and appellant-wife as a California resident. However, based on how the tax was computed on the 2015 return, it appears appellant-wife was either a part-year resident or a nonresident. In any event, for purposes of resolving the issue here, we do not need to determine whether she was a resident, part-year resident, or nonresident for 2015.

<sup>2</sup> The record does not indicate whether FTB issued to either of appellants a Request for Tax Return or Notice of Proposed Assessment for 2017. However, based on an exhibit entitled “2017 Tax Year Detail,” appellants untimely filed their 2017 tax return and were subject to a late-filing penalty. Like 2015 and 2016, for 2017, appellants only assert that reasonable cause exists for the abatement of the late-filing penalty.

<sup>3</sup> Public Law 86-272, which is a federal statute, prohibits a state from imposing an income tax on income derived within its borders from interstate commerce if the only business activity in that state consists of solicitation of orders for sales of tangible personal property. (15 U.S.C. §§ 381-384.)

their accountant who was a licensed certified public accountant in New York with competency in the subject tax law and was not aware they had a tax filing obligation in California. They further allege their accountant's advice was based on their full disclosure of the relevant facts and documents.

However, other than their appeal letter, appellants have not provided any documentary evidence to support their contention, such as written correspondence between them and their accountant containing the alleged advice and the basis for it. They have also failed to provide any evidence to support the accountant was a competent professional who had sufficient expertise to justify their reliance on the advice,<sup>4</sup> and the accountant's advice was based on appellants' full disclosure of the relevant facts and documents. Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof. (*Appeal of Magidow* (82-SBE-274) 1982 WL 11930.)

Appellants next contend they exercised ordinary business care and prudence in determining their tax obligations. To prevail on this basis, appellants "must show that the failure to file timely returns occurred despite the exercise of ordinary business care and prudence, or that such cause existed as would prompt an [ordinarily] intelligent and prudent businessman to have so acted under similar circumstances." (*Appeal of Tons* (79-SBE-027) 1979 WL 4068.) Appellants assert their non-filing "was an isolated incident," they had "always made every effort to comply," and they "made every effort to make sure that it was resolved in an expeditious manner" once they were made aware they had to file tax returns. However, again, appellants have provided no documentary evidence to substantiate these assertions.

Lastly, appellants maintain they have a history of timely filing and paying their taxes. California, however, does not permit penalty abatement due to good filing history.<sup>5</sup> Instead, reasonable cause must be shown, which appellants have not done here.

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<sup>4</sup> It is also unclear whether the representative in this matter, Mr. Huff, was the accountant who rendered the alleged advice or whether it was someone else at his firm or another firm.

<sup>5</sup> While the Internal Revenue Service has an administrative program called "First Time Abate," under which it will abate timeliness penalties if a taxpayer has timely filed returns and paid tax for the past three years, neither the California Legislature nor FTB has adopted a comparable penalty abatement program. The California Legislature has considered and declined to adopt bills that would change California law to allow a first-time abatement of timeliness-related penalties for taxpayers based solely on their history of timely filing and payment. (See Assem. Bill No. 1777 (2013-2014 Reg. Sess.).)

HOLDING

Appellants have not established reasonable cause to abate the late-filing penalties.

DISPOSITION

FTB’s denial of appellants’ claims for refund is sustained.

DocuSigned by:  
*Kenneth Gast*  
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Kenneth Gast  
Administrative Law Judge

We concur:

DocuSigned by:  
*Richard Tay*  
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Richard Tay  
Administrative Law Judge

DocuSigned by:  
*Tommy Leung*  
0C90542BE88D4E7...  
Tommy Leung  
Administrative Law Judge