

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 19044616
M. PENNER AND)
W. LEE)
_____)

OPINION

Representing the Parties:

For Appellants: Dehra Di’Fiore-Moles, TAAP¹
For Respondent: Diane M. Deatherage,
Program Specialist III

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. Penner and W. Lee (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$2,570.25 for the 2016 taxable year.

Appellants waived their right to an oral hearing; therefore, the matter is being decided based on the written record.

ISSUE

Have appellants established reasonable cause to abate the late-filing penalty?

FACTUAL FINDINGS

1. Appellants untimely filed a joint California income tax return (Form 540) for taxable year 2016, on February 15, 2018.
2. Line 111 of Form 540 instructed appellants to mail payment for the tax liability to “Franchise Tax Board, P.O. Box 942867, Sacramento, CA 94267-0001.”

¹ Appellants filed their initial appeal themselves. Thereafter, the Tax Appeals Assistance Program (TAAP) represented appellants. Ryan Cassidy filed appellants’ reply brief. Dehra Di’Fiore-Moles filed appellants’ supplemental brief and currently represents them.

3. Appellants used TurboTax software to prepare their returns. The TurboTax filing instructions for mailed returns instruct taxpayers to mail their California tax return to the same address listed on Form 540.
4. Appellants submitted evidence of communications between them and the Internal Revenue Service (IRS). No evidence of contacts between appellants and FTB were submitted.
5. FTB issued a Notice of Tax Return Change - Revised Balance, imposing a late-filing penalty, an underpayment of estimated tax penalty, and interest. Appellants paid the liabilities due.
6. Appellants filed a Reasonable Cause - Individual and Fiduciary Claim for Refund, requesting abatement of the late-filing penalty.
7. FTB denied appellants' claim for refund, and this timely appeal followed.

DISCUSSION

R&TC section 19131(a) 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. Here, appellants' Form 540 was untimely filed on February 15, 2018. Appellants do not contend that the penalty was incorrectly calculated or improperly imposed. Instead, they contend that there is reasonable cause to abate the penalty.

To establish reasonable cause to abate the late-filing penalty, a "taxpayer 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 business[person] to have so acted under similar circumstances." (*Appeal of Tons* (79-SBE-027) 1979 WL 4068.) Taxpayers have a personal, non-delegable obligation to file a tax return by the due date. (*United States v. Boyle* (1985) 469 U.S. 241, 248-249; *Appeal of Boehme* (85-SBE-134) 1979 WL 4224.) The burden of proof is on the taxpayer to establish that the difficulties experienced prevented the taxpayer from filing a timely return. (*Appeal of Duff* (2001-SBE-007) 2001 WL 1674987.)

In this appeal, appellants contend that because they filed their California return when they mailed it to the wrong tax agency (the IRS instead of FTB), it was timely filed. Appellants further assert that they had reasonable cause to believe that the return had been timely filed with FTB because they had enclosed a check for the tax due addressed to FTB, which the IRS cashed

even though it was made payable to FTB. Appellants' records showed that payment had been made, and they therefore believed that they were reasonable in assuming that the tax return was timely filed and the tax liability was paid. We disagree.

Under the circumstances here, we believe a reasonably prudent person would have cross-checked the mailing address prior to mailing the tax return. (See *Appeal of Risser* (84-SBE-044), 1984 WL 16123 [unintentional error or oversight, by itself, does not constitute reasonable cause].) Form 540 lists the proper mailing address for sending California tax return and payments, but appellants failed to mail their 2016 return to that address. Moreover, appellants prepared their returns using TurboTax software, which instructed them to mail their return to the same address shown on Form 540. Therefore, appellants were not reasonable in using the IRS mailing address, which is clearly different from the one on their California return and on their TurboTax filing instructions for California.

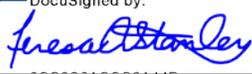
With respect to the IRS, while we understand appellants' confusion, we cannot conclude that they acted as reasonably prudent persons would for a number of reasons. First, appellants' check made out to "Franchise Tax Board" was stamped by the IRS with "United States Treasury" in the payee line when it was cashed on April 24, 2017. The IRS specifically advised, among other things, that appellants should "detach [their] state or local return and mail it to the appropriate state or local agency." Appellants have not established that they took steps to inquire into the status of their state return after they received that advice, focusing only on the other requests by the IRS. On July 14, 2017, the IRS refunded the amount of appellants' check made out to FTB, plus interest. However, appellants do not appear to have inquired into why they received an amount from the IRS that roughly equaled their California tax payment. In a September 6, 2017 letter to appellants, the IRS indicated they issued a refund to appellants "as requested." Thus, we conclude that appellants should have known that they had mistakenly sent their return to the wrong taxing agency, and that they did not take reasonable steps to fix the error prior to February 15, 2018.

HOLDING

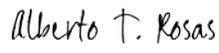
Appellants have not established that they had reasonable cause for filing their California tax return late.

DISPOSITION

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

DocuSigned by:

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Teresa A. Stanley
Administrative Law Judge

We concur:

DocuSigned by:

2281E8D466014D1
Alberto T. Rosas
Administrative Law Judge

DocuSigned by:

2D80E82EB65E446
Elliott Scott Ewing
Administrative Law Judge

Date Issued: 2/27/2020