

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 19064916
)
ESTATE OF R. SALADO (DEC'D))
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)

OPINION

Representing the Parties:

For Appellant: Mounia Boukhalfa, TAAP¹

For Respondent: Eric A. Yadao, Tax Counsel III

D. CHO, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, A. Salado, executor of the estate of R. Salado (Dec'd), (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant's claim for refund of \$4,117.75 for the 2012 taxable year.²

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

ISSUE

Whether appellant has demonstrated that the late filing of his 2012 tax return was due to reasonable cause and not willful neglect.

¹ Appellant filed his opening brief. Thereafter, the Tax Appeals Assistance Program (TAAP) provided representation for appellant.

² Appellant filed a claim for refund for \$8,268.62, which consists of a late-filing penalty of \$4,117.75 and interest of \$4,150.87. With respect to the interest amount, appellant requested interest abatement on the grounds of extreme financial hardship pursuant to R&TC section 19112, which FTB denied. According to the holding in *Appeal of Moy*, 2019-OTA-057P, the Office of Tax Appeals does not have the authority to review FTB's denial of interest abatement based on an extreme financial hardship. Therefore, we do not address the denial of the claim for refund with respect to the interest, and we only consider the amount of \$4,117.75 to be in dispute for this appeal, which represents the late-filing penalty.

FACTUAL FINDINGS

1. Appellant was incarcerated beginning November 2011, and his assets were frozen by the federal government in 2012.
2. On February 27, 2015, appellant untimely filed his 2012 tax return through the services of a certified public accountant.
3. Because appellant filed his tax return approximately 22 months late, FTB assessed a late-filing penalty of \$4,117.75.
4. By check dated November 9, 2018, appellant paid his tax liability, which included the late-filing penalty amount of \$4,117.75.
5. Appellant filed a timely claim for refund on November 13, 2018, which FTB denied.
6. This timely appeal followed.

DISCUSSION

R&TC section 19131 provides that FTB shall impose a late-filing penalty when a taxpayer fails to file a tax return on or before the due date, unless the taxpayer establishes that the late filing was due to reasonable cause and not willful neglect. The penalty is computed at five percent of the tax due, after allowing for timely payments, for every month, or fraction thereof, that the return is late, up to a maximum of 25 percent. (R&TC, § 19131(a), (c).) Appellant does not dispute the imposition or calculation of the penalty; therefore, we only examine whether there is reasonable cause to abate the penalty.

When FTB imposes a penalty, the law presumes that the penalty was imposed correctly. (*Appeal of Myers* (2001-SBE-001) 2001 WL 37126924.) The burden of proof is on the taxpayer to show that reasonable cause exists to support an abatement of the penalty. (*Appeal of Beadling* (77-SBE-021) 1977 WL 3831.) As a general matter, 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.)

Although appellant concedes that his incarceration alone is not reasonable cause for his failure to timely file his 2012 tax return, appellant argues that all of his assets were frozen by the

federal government. As a result, appellant believed that he could not pay any tax liability, which would make the filing of his tax return a futile act. Thus, appellant states that his inability to pay any tax liability constituted reasonable cause for his failure to timely file his 2012 tax return.

The ability to file a return is not contingent upon an individual's ability to pay a tax liability reported on the return, and there is no provision in the Personal Income Tax Law that creates such a requirement. R&TC section 19131 sets forth the penalty for failing to timely file a tax return, whereas R&TC section 19132 sets for the penalty for failing to timely pay a tax liability. Both statutes have separate requirements for the assessment and abatement of their respective penalties, and appellant's attempt to combine the two statutes is unsupported by any legal authority. Thus, appellant's argument that his inability to pay the tax establishes reasonable cause for his failure to timely file his 2012 tax return is unpersuasive and erroneous. With respect to the penalty at issue in this appeal (failure to timely file a return), there is no evidence in the record, including appellant's incarceration, that would establish that appellant had reasonable cause for his failure to timely file his return. (See, e.g., *Llorente v. Comm'r* (1980) 74 T.C. 260, 269 [concluding that a taxpayer's "incarceration at the time the return was due was not reasonable cause for failure to file"], *revd.* on other grounds (2d Cir. 1981) 649 F.2d 152.) Therefore, we find that appellant failed to meet his burden of proof.

HOLDING

Appellant has not demonstrated reasonable cause for failing to timely file his 2012 tax return.

DISPOSITION

FTB's denial of the claim for refund is sustained.

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Daniel Cho

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Daniel K. Cho
Administrative Law Judge

We concur:

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Cheryl L. Akin

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Cheryl L. Akin
Administrative Law Judge

DocuSigned by:

Kenneth Gast

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Kenneth Gast
Administrative Law Judge

Date Issued: 4/14/2020