

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 19115452
R. KNIGHT III AND)
A. KNIGHT)
_____)

OPINION

Representing the Parties:

For Appellants: Linda L. Quane, CPA

For Respondent: Shanon Pavao, Tax Counsel III

N. DANG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, R. Knight III and A. Knight (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying their claim for refund for the 2016 tax year.

Appellants waived the right to an oral hearing, and therefore, we decide the matter based on the written record.

ISSUE

Whether there is reasonable cause to abate the late-filing penalty.

FACTUAL FINDINGS

1. Appellants late-filed their joint 2016 California income tax return.
2. Consequently, FTB imposed a \$4,723.50 late-filing penalty for the 2016 tax year.
3. Appellants paid the outstanding balance due for 2016 and filed a refund claim for the penalty amount.

DISCUSSION

The late-filing penalty shall not apply if a taxpayer establishes that the failure to file a return within the prescribed deadline was due to reasonable cause and not willful neglect. (R&TC, § 19131(a).) The standard of reasonable cause requires the taxpayer to establish that the

failure to timely file occurred despite the exercise of ordinary business care and prudence. (*United States v. Boyle* (1985) 469 U.S. 241, 246.)¹ Taxpayers carry the burden of establishing that reasonable cause exists to abate the penalty. (*Appeal of Beadling* (77-SBE-021) 1977 WL 3831.)

Appellants contend that the late-filing penalty should be abated because they relied upon a professional tax preparer to file their 2016 return, who had, in the past, filed their tax returns for years without issue, and that they were assured by this preparer that their 2016 return had been filed. Appellants also point to their exemplary filing history and the subsequent remedial actions taken in filing their 2016 return and paying the tax due. However, we find these contentions unpersuasive.

Every taxpayer has a personal, non-delegable duty to timely file a tax return. (*United States v. Boyle, supra*, at p. 252.) In other words, this non-delegable duty required appellants to personally ensure the timely filing of their 2016 return. Appellants' reliance on their tax preparer to timely file their 2016 return, therefore, does not constitute reasonable cause. (*Ibid.*) Moreover, while the corrective actions taken by appellants are to be commended, they do not establish that appellants acted with ordinary business care and prudence prior to the due date for their 2016 return. Finally, California law does not provide for penalty abatement based upon a history of timely filing.²

¹ Because the relevant language of R&TC section 19131 pertaining to the reasonable cause exception is patterned after Internal Revenue Code section 6651, the federal courts' interpretation of the "reasonable cause" standard is persuasive authority in determining the proper construction of this California statute. (*Andrews v. Franchise Tax Bd.* (1969) 275 Cal.App.2d 653, 658; *Rihn v. Franchise Tax Bd.* (1955) 131 Cal.App.2d 356, 360.)

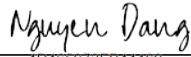
² The California Legislature has previously considered and declined to adopt bills that would allow a first-time abatement for taxpayers with a history of good filing and payment compliance. (See, e.g., Assembly Bill No. 1777 (2013-2014 Reg. Sess.).)

HOLDING

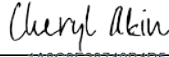
There is no reasonable cause to abate the late-filing penalty.


DISPOSITION

FTB's action is sustained.

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Nguyen Dang
Administrative Law Judge

We concur:

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Cheryl L. Akin
Administrative Law Judge

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Kenneth Gast
Administrative Law Judge

Date Issued: 7/23/2020