

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No.19125568
Y. WANG AND)
M. WANG)
_____)

OPINION

Representing the Parties:

For Appellants: Wailim Wu, CPA

For Respondent: Joel M. Smith, Tax Counsel III

For Office of Tax Appeals: Nicholas Awakuni,
Graduate Student Assistant

M. GEARY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Y. and M. Wang (appellants) appeal an action by respondent Franchise Tax Board denying appellants’ claim for refund of \$1,118.70 for the 2017 tax year.

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

ISSUES

- 1. Are appellants entitled to abatement of the late-filing penalty?
- 2. Are appellants entitled to abatement of interest?

FACTUAL FINDINGS

- 1. Appellants did not timely file their California joint income tax return (return) for the 2017 tax year.
- 2. On April 24, 2019, respondent issued to appellants a Request for Tax Return directing appellants to respond by May 29, 2019, by filing their 2017 return, providing a copy of that return if they had already filed it, or explaining why they were not required to file a 2017 return.

3. Appellants filed their 2017 return and remitted payment on April 27, 2019.
4. On June 4, 2019, respondent issued to appellants a Notice of Tax Return Change – Revised Balance, which reflected an additional balance due for the 2017 tax year and included a late-filing penalty and accrued interest.¹
5. On July 5, 2019, appellants paid the balance due and requested a refund of the late-filing penalty and interest on reasonable cause grounds.
6. On October 31, 2019, respondent denied appellants’ claim for refund, and appellants timely appealed.

DISCUSSION

Issue 1 - Are appellants entitled to abatement of the late-filing penalty?

Absent an extension, taxpayers who file on a calendar year basis are required to file their income tax returns by April 15 of the following year. (R&TC, § 18566.) R&TC section 19131(a) states that a penalty shall be imposed if a taxpayer files their tax return after the date on which it is due and fails to prove that the late filing was due to reasonable cause and not due to willful neglect. (*Appeal of Xie*, 2018–OTA–076P). The imposition of the penalty by respondent is presumed correct, and the burden of proving that the late filing was due to reasonable cause and not due to willful neglect falls to the taxpayer. (*Ibid.*)

Appellants argue that their failure to timely file their 2017 return was due to reasonable cause and not due to willful neglect. They assert that the tax professional they hired to prepare and file their return failed to file their return and also failed to inform appellants that the return had not been filed. Appellants further allege that when they learned (from respondent) that the return had not been filed, they immediately filed it and paid the taxes due.

In order to qualify for abatement from the penalty, appellants must show they qualify for abatement under R&TC section 19131. In *United States v. Boyle* (1985) 469 U.S. 241, the Supreme Court established a bright line rule that a taxpayer has a nondelegable duty to timely file tax returns.² Reliance on a third party to fulfill that duty does not relieve the taxpayer of the

¹ The additional amount due for the penalty and interest was partially offset by an overpayment.

² Because the relevant language of R&TC section 19131 pertaining to the reasonable cause exception is patterned after Internal Revenue Code section 6651, federal courts’ interpretation of the “reasonable cause” standard is persuasive authority in determining the proper application of this California statute. (See *Andrews v. Franchise Tax Bd.* (1969) 275 Cal.App.2d 653, 658.)

duty to comply with the unambiguous statute. (*Id.* at p. 251.) R&TC section 18566 unambiguously required appellants to file their 2017 return by April 15, 2018. Appellants failed to do so, and their reliance on a tax professional does not constitute reasonable cause for their failure. Thus, based on the evidence, we conclude that appellants are not entitled to abatement of the late-filing penalty.

Issue 2 - Are appellants entitled to abatement of interest?

Taxes are due and payable on the due date for the return without regard to any extension. (R&TC, § 19001.) Interest is assessed from the date a tax liability is due through the date on which the tax liability is paid. (R&TC, § 19101.) The assessment of interest on late payments is mandatory and does not constitute a penalty, but merely represents a charge for a taxpayer’s use of money which should have been paid to the state. (*Appeal of Moy*, 2019–OTA–057P).

While there are circumstances that may warrant interest relief (see, e.g., R&TC, §§ 19104, 19112, and 21012),³ appellants have not argued that they are entitled to relief on any grounds except the “reasonable cause” argument discussed above. However, there is no reasonable cause exception to the imposition of interest. (*Appeal of Moy, supra.*) We conclude that appellants are not entitled to abatement of interest.

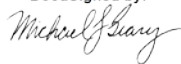
³ Generally, R&TC section 19104 allows interest relief when there has been unreasonable error or delay by respondent’s employee in the performance of a ministerial or managerial act; R&TC section 19112 allows interest relief when payment would cause the taxpayer extreme financial hardship caused by significant disability or other catastrophic circumstances; and R&TC section 21012 allows interest relief when the failure to timely pay (or file) is due to reasonable reliance on respondent’s written advice.

HOLDINGS

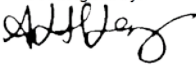
1. Appellants have not established reasonable cause to abate the late-filing penalty.
2. Appellants have not established that they met the criteria for abatement of interest.

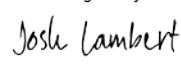
DISPOSITION

Respondent’s action is sustained.

DocuSigned by:

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 Michael F. Geary
 Administrative Law Judge

We concur:

DocuSigned by:

272945E7B372445
 Andrea L.H. Long
 Administrative Law Judge

DocuSigned by:

CB1F7DA37631416
 Josh Lambert
 Administrative Law Judge

Date Issued: 12/10/2020