

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 20036046
J. AUERBACH AND)
J. S. AUERBACH)
_____)

OPINION

Representing the Parties:

For Appellants: Harish Ramaswamy, Tax Director

For Respondent: Jean M. Cramer, Tax Counsel IV

For Office of Tax Appeals: Carmen Vera, Graduate Student Assistant

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. Auerbach and J. S. Auerbach (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$24,470.25 for the 2018 taxable year.

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

ISSUE

Did appellants have reasonable cause for failing to file their 2018 income tax return on time?

FACTUAL FINDINGS

1. Appellants did not file their 2018 tax return until October 23, 2019, which resulted in the imposition of a late filing penalty.
2. Appellants’ return reflected a total California tax of \$735,339, which they did not fully pay until December 13, 2019.
3. Appellants filed a claim for refund of the \$24,470.25 late filing penalty, which FTB denied.

4. There is no dispute regarding the computation of the late filing penalty.

DISCUSSION

A late filing penalty is imposed when taxpayers fail to file their tax return on or before its due date, unless the taxpayers establish that the late filing was due to reasonable cause and was not due to willful neglect. (R&TC, § 19131.) Reasonable cause is established when the taxpayer uses the requisite “exercise of ordinary business care and prudence.” (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P; *Appeal of Tons* (79-SBE-027) 1979 WL 4068.) Appellants’ return was due on April 15, 2019. Because their return was not filed until after the extended filing deadline of October 15, 2019, the return was filed late. (R&TC, §§ 18566, 18567; Cal. Code Regs., tit. 18, § 18567.)

Appellants offer three explanations as to why reasonable cause existed: (1) they were waiting for a Schedule K-1, which they did not receive until October 14, 2019; (2) there was no willful intent on appellants’ part; and (3) appellants have a good filing history.

The first reason offered is the delayed receipt of a Schedule K-1. Appellants contend that they did not want the return to reflect incorrect information, which would occur if data from that schedule was excluded. Difficulty in obtaining information does not constitute reasonable cause for the late filing of a return. (See *Estate of Vrinotis v. Commissioner* (1982) 79 T.C. 298, 311; see also *Appeal of Sleight* (83-SBE-244) 1983 WL 15615.) Here, appellants assert that by deciding to postpone filing their return until receiving the information from the Schedule K-1, they exercised ordinary business care and prudence. However, lack of information is not a valid reason to postpone filing. Further, *Appeal of Xie*, 2018-OTA-076P, informs us that “the appropriate path is to file a timely return and amend it later, if needed.” Thus, appellants’ delayed receipt of the Schedule K-1 does not constitute reasonable cause.

Appellants also contend that reasonable cause, not willful intent, was shown because the late filing was beyond their control due to the delayed receipt of their Schedule K-1. However, taxpayers have a nondelegable duty to file their tax returns timely. (*U.S. v. Boyle* (1985) 469 U.S. 241, 247, 251.) Therefore, the onus was on appellants to timely file their 2018 tax return using the best information available, and not rely on the timely preparation by a third party of their Schedule K-1. (See *Appeal of Xie, supra.*) As such, appellants did not establish reasonable cause on this ground.

Lastly, appellants contend that the late filing penalty should be abated based on their good filing history. California law, unlike federal practice, has no provision that allows for abatement of late filing penalties based solely on a taxpayer’s good filing history. Instead, California requires that reasonable cause be established pursuant to R&TC section 19131.


Because appellants filed their return late and failed to establish reasonable cause existed to excuse their late filing, the late filing penalty cannot be abated.

HOLDING

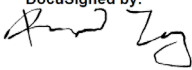
Appellants did not have reasonable cause for failing to file their 2018 income tax return on time.


DISPOSITION

FTB’s action is sustained.

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Tommy Leung
Administrative Law Judge

We concur:

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Richard Tay
Administrative Law Judge

DocuSigned by:

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Sheriene Anne Ridenour
Administrative Law Judge

Date Issued: 1/25/2021