

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
A. YOUSEF

) OTA Case No. 20046089
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OPINION

Representing the Parties:

For Appellant: Ruthie James, EA

For Respondent: Phillip C. Klean, Tax Counsel III

S. RIDENOUR, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, A. Yousef (appellant)¹ appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$2,021.52, plus interest, for the 2018 tax year.

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

ISSUE²

Whether appellant has shown reasonable cause for failing to timely pay tax.

FACTUAL FINDINGS

1. On September 21, 2019, appellant timely filed a joint 2018 California income tax return within the extension period. Appellant reported a total tax due, which appellant remitted with the return.

¹ Although A.Yousef filed a joint tax return with L.Yousef for 2018, L.Yousef did not sign the appeal letter, so we refer only to A. Yousef as appellant.

² The claim for refund amount consists of a late-payment penalty, plus applicable interest. Appellant did not provide a specific contention regarding interest abatement, and we find no apparent grounds for relief under the facts. As such, we will not address interest abatement further.

2. FTB processed the return as filed. Since payment was not remitted in full by the payment due date of April 15, 2019, FTB issued appellant a Notice of Tax Return Change - Revised Balance for the 2018 tax year, reflecting a late-payment penalty, plus interest.
3. Appellant paid the outstanding liability and subsequently filed a claim for refund based on reasonable cause, which FTB denied. This timely appeal followed.

DISCUSSION

R&TC section 19132 provides that a late-payment penalty is imposed when a taxpayer fails to pay the amount shown as due on the return on or before the due date of the return. Generally, the date prescribed for the payment of the tax is the due date of the return (without regard to extensions of time for filing). (R&TC, § 19001.) Here, FTB properly imposed the late-payment penalty because the payment due date was April 15, 2019, and appellant did not satisfy his 2018 tax liability until September 21, 2019, over five months after the due date.

The late-payment penalty will be abated, however, if the taxpayer shows that the failure to make a timely payment of tax was due to reasonable cause and was not due to willful neglect. (R&TC, § 19132(a).) To establish reasonable cause for the late payment of tax, the taxpayer must show that the failure to make a timely payment of the proper amount of tax occurred despite the exercise of ordinary business care and prudence. (*Appeal of Moren*, 2019-OTA-176P.) The taxpayer bears the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Ibid.*)

Appellant contends that due to changes in tax law effective 2018, his tax preparer had “to do further verification,” especially regarding the 20 percent “K-1 dividend income” deduction (20 percent deduction) allowed on federal returns,³ so appellant filed an extension since he relied on his preparer’s interpretation of the law. Appellant further contends that since the 20 percent

³ It appears that appellant is referring to the federal qualified business income deduction (see, Internal Revenue Code (IRC), § 199A) created by the federal Tax Cuts and Jobs Act (TCJA), which became law in December 2017.

deduction was not allowed on his California tax return, his California adjusted income and tax liability was much higher than anticipated.⁴

It is well settled that general difficulty in making computations or determining taxable income with exactitude does not constitute reasonable cause for paying late. (*Appeal of Sleight* (83-SBE-244) 1983 WL 15615; see also *Appeal of Xie*, 2018-OTA-076P.) Furthermore, ignorance or a misunderstanding of the law does not excuse noncompliance with statutory requirements. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.) A taxpayer who fails to acquaint themselves with the requirements of California tax law has not exercised ordinary business care and prudence. (*Appeal of Diebold, Inc.* (83-SBE-002) 1983 WL 15389.) The determination of whether reasonable cause exists for the late payment requires an analysis of appellant's actions leading up to the late payment, the timing of those actions, and whether they reflect ordinary business care and prudence, such as those that an ordinarily intelligent and prudent businessperson would have performed under similar circumstances. (*Appeal of Moren, supra.*)

Appellant contends that he filed an extension to allow his tax preparer additional time “to do further verification” on the 20 percent deduction and that he reasonably relied on the preparer's interpretation of the law; however, it is well-settled law that a taxpayer's failure to make a timely payment or file a return is not excused by the taxpayer's reliance on a tax preparer, and such reliance does not constitute reasonable cause because a taxpayer has a personal, non-delegable obligation to meet statutory deadlines. (*United States v. Boyle* (1985) 469 U.S. 241, 251-252 (*Boyle*)). The courts have applied this bright-line rule—as articulated in *Boyle*, a case involving a late-filing penalty—to the late-payment penalty, even in circumstances where a taxpayer acted prudently in dealing with their agent or employee. (See, e.g., *Kimdun Inc., et al. v. United States* (C.D. Cal. 2016) 202 F.Supp.3d 1136, 1144-1146; *Conklin Bros. of Santa Rosa Inc. v. United States* (9th Cir. 1993) 986 F.2d 315.) The *Boyle* Court noted reasonable cause may exist, however, if a taxpayer relies on the advice of an accountant or attorney with respect to substantive matters of tax law or whether a return needs to be filed in the

⁴ Appellant also contends that his “standard deduction was limited and reduced considerably.” As appellant filed claiming itemized deductions on his 2018 California tax return, as opposed to the standard deduction, it appears that appellant is referring to the \$10,000 aggregate amount limitation on the itemized deduction for certain taxes, including state, local, and property taxes. (See IRC, § 164(b)(6) [added by TCJA].) California has its own standalone method of computing taxable income (R&TC, § 17073), including the California standard deduction provision (R&TC, § 17073.5) and the disallowance of a deduction for state and local income taxes paid (R&TC, § 17220(a)). Therefore, any federal income tax limitation on deductible state and local income taxes will have no impact on the computation of California taxable income.

first place, if the taxpayer shows: (1) the person relied on by the taxpayer is a tax professional with competency in the subject tax law, and (2) the tax professional’s advice is based on the taxpayer’s full disclosure of the relevant facts and documents. (*Boyle, supra*, at pp. 244, 250-251.)

While appellant alleges his tax preparer needed “to do further verification” on the 20 percent deduction, appellant has provided no evidence substantiating advice from his preparer regarding his California tax liability, when or whether to pay the obligation, or that filing within the extension meant appellant would not have to pay by the due date of the return. It appears that appellant is asserting that his tax preparer required additional time to determine whether appellant could claim the 20 percent deduction on his California tax return; however, there is no corroborating evidence of any advice from the tax preparer with respect to any substantive matters of tax law, let alone the 20 percent deduction. Furthermore, appellant has not provided any evidence indicating what steps appellant or his tax preparer took in the approximately 15 months between December 2017 (when TCJA was enacted), and April 15, 2019 (when appellant’s 2018 tax liability became due), to discern what impact, if any, TCJA would have on appellant’s 2018 California tax liability. We believe an ordinarily intelligent and prudent businessperson under similar circumstances would have proactively taken such steps to reasonably ensure timely payment of tax. Therefore, we find appellant has not shown reasonable cause for failing to timely pay his taxes.

Regarding appellant’s contentions that he has an otherwise good tax compliance history, appellant’s filing and payment history is not relevant to the abatement of the late-payment penalty because there is no California legal authority which allows for an abatement of the penalty on those grounds.⁵ R&TC section 19132 provides the only basis under California law to abate a late-payment penalty.

⁵ The California Legislature has considered and declined to adopt bills that would change California law to allow a first-time abatement for taxpayers with a history of filing and payment compliance. (See, e.g., Assembly Bill No. 1777 (2013-2014 Reg. Sess.))

HOLDING

Appellant has not shown reasonable cause for failing to timely pay tax.

DISPOSITION

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

DocuSigned by:
Sheriene Anne Ridenour
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Sheriene Anne Ridenour
Administrative Law Judge

We concur:

DocuSigned by:
Tommy Leung
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Tommy Leung
Administrative Law Judge

DocuSigned by:
Huy "Mike" Le
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Huy "Mike" Le
Administrative Law Judge

Date Issued: 2/2/2021