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OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of:	OTA Case No. 20015659
R. KHACHATRYAN AND E. TOVMASYAN	

OPINION

Representing the Parties:

For Appellants: Chandler Keeton, Jack Elliott, Tax Appeals Assistance Program[1]

For Respondent: Eric A. Yadao, Tax Counsel III

M. GEARY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, R. Khachatryan and E. Tovmasyan (collectively, appellants) appeal an action by respondent Franchise Tax Board denying appellants' claim for refund for the 2017 taxable year.

This matter is being decided based on the written record because appellants waived their right to an oral hearing.

ISSUES

1. Are appellants entitled to abatement and refund of the late-filing penalty?
2. Are appellants entitled to abatement and refund of the estimated tax penalty?
3. Are appellants entitled to abatement and refund of interest?

FACTUAL FINDINGS

1. Appellants hired someone to prepare and file their 2017 joint income tax return. That person (the preparer) did not file the return by the extended due date of October 15, 2018.

[1] Appellants prepared and filed their own appeal letter/opening brief. Chandler Keeton filed appellants' reply brief. Jack Elliot entered an appearance on appellants' behalf after appellants' briefs were filed.

2. In November 2018, appellants learned that the preparer had not filed their 2017 joint return.
3. Respondent issued to appellant R. Khachatryan an April 23, 2019 Request for Tax Return, which instructed him to respond by May 29, 2019, by filing a return, providing a copy of the return if already filed, or explaining why no return was required.
4. Appellants filed a 2017 joint return and made a substantial payment toward their joint liability on May 17, 2019.
5. Prior to the tax return due date, appellants' employer withheld California income taxes from their salaries, which constituted approximately 36 percent of their California taxable income for 2017, but appellants made no payments of estimated taxes that would be due on the other 64 percent of their income until appellants filed their 2017 return on May 17, 2019.
6. On May 28, 2019, appellant R. Khachatryan replied to respondent's Request for Tax Return, stating that the 2017 joint return was filed on May 17, 2019.
7. On May 29, 2019, respondent issued to appellants a Notice of Tax Return Change - Revised Balance, which acknowledged payments made to that date and notified appellants that their 2017 liability also included a late-filing penalty, an estimated tax penalty, and interest, which were then due.
8. Appellants paid the balance due on August 13, 2019, and a few days later filed a claim for refund of the late-filing penalty, estimated tax penalty, and interest.
9. By letter dated October 3, 2019, respondent denied appellants' claim for refund. This appeal followed.

DISCUSSION

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

R&TC section 19131 requires FTB to impose a late-filing penalty when a taxpayer does not file its return on or before its due date, unless the taxpayer shows that the late filing was due to reasonable cause and not due to willful neglect.[2] According to R&TC section 19131(a), the

[2] Respondent may grant a taxpayer up to six more months to file a tax return and the corresponding regulation provides for an automatic six-month extension without a written request. (R&TC, § 18567(a); Cal. Code Regs., tit. 18, § 18567.) However, if the return is not filed within six months of the original due date, no valid extension exists, and the late-filing penalty amount is computed by reference to the original due date of the return. (*Ibid.*)

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late-filing penalty is 5 percent of the tax for each month or fraction thereof elapsing between the due date of the return (determined without regard to any extension of time for filing) and the date on which the return is filed, with a maximum penalty equal to 25 percent of the tax. When respondent imposes a late-filing penalty, it is presumed to have been correctly imposed, and the burden of proof is on the taxpayer to show that reasonable cause exists to abate the penalty. (*Appeal of Xie*, 2018-OTA-076P.) To overcome the presumption of correctness, the taxpayer must provide credible and competent evidence supporting a claim of reasonable cause. (*Ibid*.) To establish reasonable cause, the taxpayer must show the failure to timely file occurred despite the exercise of "ordinary business care and prudence." (*Appeal of Friedman*, 2018-OTA-077P.) Unsupported assertions are not sufficient to satisfy the taxpayer's burden of proof. (*Appeal of Scanlon*, 2018-OTA-075P.)

Appellants do not dispute that their return was filed late or respondent's calculation of the penalty. They argue the late filing of their return was due to reasonable cause and not due to willful neglect and, therefore, the late-filing penalty should be abated and refunded to them. In support of this argument, they assert that they had for many years entrusted the preparation and filing of their returns to a certified public accounting firm, which merged with or was otherwise taken over by another business that was not a certified accounting firm. Appellants state that they reasonably assumed the new business was staffed by competent accountants who would timely file their return, and that they did not discover otherwise (and that their return had not been timely filed) until November 2018. Appellants contend that they tried, unsuccessfully, to contact the preparer prior to the extended due date, assumed that the preparer would timely file the return, and could not have filed their return by the due date on their own because they did not have sufficient information regarding appellant R. Khachatryan's gross income.

In *United States v. Boyle* (1985) 469 U.S. 241 (*Boyle*), the Supreme Court established a bright-line rule that a taxpayer has a nondelegable duty to timely file tax returns.[3] Reliance on a third party to fulfill that duty does not constitute reasonable cause that relieves the taxpayer of the 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, absent an

[3] 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.)

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extension. Appellants failed to do so, and their reliance on a tax professional does not constitute reasonable cause for their failure.[4]

Appellants misconstrue the *Boyle* holding when they argue that delegation of the responsibility for filing a tax return constitutes reasonable cause absent an unequivocal indication by the delegee that the return would not be timely filed. Such an interpretation would essentially negate the rule announced in *Boyle* that taxpayers have a nondelegable responsibility to timely file their returns.

Appellants' claim that they lacked appellant R. Khachatryan's gross income information for 2017 does not change this result. Difficulty obtaining information generally does not constitute reasonable cause for the late filing of a return. (*Appeal of Xie*, *supra*; but see *Appeal of Moren*, 2019-OTA-176P.) Appellants have not shown that appellants were unable to obtain information that was required to prepare their return, or that they made diligent efforts to obtain that information. On the contrary, appellants' argument that they delegated the task to another and expected the return to be timely completed and filed necessarily assumes that the preparer, and therefore appellants, had all required information.

Finally, appellants state that they became aware of the problems with their returns in November 2018. Thus, even if there was evidence to support a finding of reasonable cause for not filing their return by the October 15, 2018 extended due date, that excuse would not have extended long past the November 2018 discovery date. (*Appeal of Moren*, *supra*.) Appellants did not file their return or pay most of the taxes until May 17, 2019, more than five months later. Appellants provide no explanation for the delay. Therefore, even if we were to conclude that reasonable cause existed until appellants discovered the problems with their returns in November 2018, no penalty relief would be warranted. (See *Appeal of Triple Crown Baseball LLC*, 2019-OTA-025P.)[5]

Thus, we conclude that appellants are not entitled to abatement and refund of the late-filing penalty.

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[4] If reliance on a tax professional does not constitute reasonable cause, reliance on someone who is not a tax professional certainly would not constitute reasonable cause.

[5] As noted in the cited case, at footnote 8, an analysis of whether there is reasonable cause for a failure to timely file a tax return is substantially the same as an analysis of whether there is reasonable cause for a failure to timely pay tax. Thus, authorities persuasive or controlling in one analysis may be equally persuasive or controlling in the other.

Issue 2: Are appellants entitled to abatement and refund of the estimated tax penalty?

Subject to certain exceptions not relevant here, FTB must impose a penalty on a taxpayer who fails to make adequate estimated tax payments.[6] (R&TC, § 19136; Internal Revenue Code (IRC), § 6654.) Estimated tax payments are due four times a year, on April 15, June 15, and September 15 of the taxable year, and on January 15 of the following tax year. (IRC, § 6654(c).) There is nothing in the law that allows a taxpayer relief from the penalty based solely on a showing of reasonable cause. (*Appeal of Saltzman*, 2019-OTA-070P.)

According to their Forms W-2, appellants had California income tax withheld from their salaries. However, salary income constituted just over one-third of their taxable income reported on their return, and the amount withheld for California income taxes constituted less than 16 percent of the taxes due. Appellants made no estimated tax payments and did not pay the remainder of the tax due until they filed their 2017 return in May 2019, seven months late.

The undisputed evidence shows that appellants paid only a small percentage of their estimated taxes and that respondent correctly calculated the estimated tax penalty. Appellants do not allege otherwise. Appellants' reasonable cause arguments do not address their failure to pay estimated taxes, and, in any event, reasonable cause is not a valid excuse for failing to pay estimated tax under these circumstances. We therefore conclude that appellants are not entitled to abatement and refund of the estimated tax penalty.

Issue 3: Are appellants entitled to abatement and refund of interest?

Taxes are due and payable as of the due date of the taxpayer's return without regard to any extension. (R&TC, § 19101.) If tax is not paid by the due date, or if respondent assesses additional tax and that assessment becomes due and payable, the taxpayer is charged interest on the resulting balance due, compounded daily. (*Ibid*.) Interest is not a penalty but is merely compensation for a taxpayer's use of the money. (*Appeal of GEF Operating, Inc*., 2020-OTA-057P.)

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[6] IRC section 6654(e)(3) provides two avenues upon which the addition to tax may be waived, neither of which find support in the evidence here. The first, under IRC section 6654(e)(3)(A), authorizes the government to waive the addition to tax if it determines that, "by reason of casualty, disaster, or other unusual circumstances the imposition of such addition to tax would be against equity and good conscience." The second, under IRC section 6654(e)(3)(B), authorizes waiver if the IRS (or here, FTB) determines that: (i) during the applicable tax year or the preceding year, the taxpayer either retired after having attained age 62, or became disabled, *and* (ii) the underpayment was due to "reasonable cause" and not due to willful neglect.

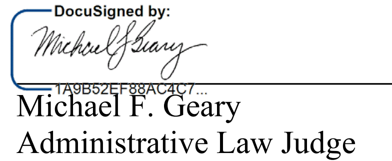
Appellants make the same reasonable cause argument in support of their request for relief of interest. However, there is no reasonable cause exception to the imposition of interest.[7] (*Appeal of GEF Operating, Inc.*, *supra*.) Consequently, we conclude that appellants are not entitled to abatement and refund of interest.

HOLDINGS

1. Appellants are not entitled to abatement and refund of the late-filing penalty.
2. Appellants are not entitled to abatement and refund of the estimated tax penalty.
3. Appellants are not entitled to abatement and refund of interest.

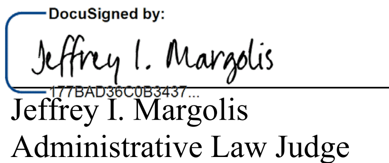
DISPOSITION

Respondent's denial of appellants' claim for refund is sustained.

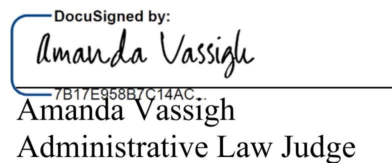


Michael F. Geary
Administrative Law Judge

We concur:



Jeffrey I. Margolis
Administrative Law Judge



Amanda Vassigh
Administrative Law Judge

Date Issued: 3/9/2021

[7] Although respondent may abate all or a part of any interest on a deficiency to the extent that interest is attributable in whole or in part to any unreasonable error or delay committed by respondent in the performance of a ministerial or managerial act, and we may review respondent's denial of interest relief for an abuse of discretion, appellants make no such argument here. (R&TC, § 19104(a)(1), (b)(1) and (b)(2)(B).)