

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 20035911
GARY M. AND PATRICIA B. ORMAN)
IRREVOCABLE TRUST 2012)
_____)

OPINION

Representing the Parties:

For Appellant: James J. Orman, Trustee

For Respondent: Meghan McEvilly, Tax Counsel III

For Office of Tax Appeals: Michael Park, Graduate Student Assistant

A. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Gary M. and Patricia B. Orman Irrevocable Trust 2012 (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claims for refund of \$22,422.50 for the 2014 tax year, and \$38,867.11 for the 2015 tax year.¹

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

ISSUES

1. Whether appellant has established reasonable cause for failing to timely file its 2014 and 2015 tax returns.
2. Whether appellant has established that the estimated tax penalty should be abated.

¹ The 2014 amount consists wholly of the late filing penalty, and the 2015 amount consists of the late filing penalty of \$24,715.50, an underpayment of estimated tax penalty (estimated tax penalty) of \$1,893.00, and interest of \$12,258.61. Because appellant has not asserted any arguments for abating interest, this issue will not be addressed separately in this Opinion and will only be decreased if the underlying penalties upon which interest accrued are abated.

FACTUAL FINDINGS

1. Appellant filed its 2014 and 2015 fiduciary income tax returns (Form 541), and remitted tax payments for both years, on October 15, 2018.
2. Because appellant filed the returns after the due date of the return, FTB imposed late filing penalties for both years. For the 2015 tax year, FTB additionally imposed the estimated tax penalty. Appellant subsequently paid the outstanding penalties, plus interest.
3. Thereafter, FTB received separate refund claims for the 2014 and 2015 tax years, which requested abatements of the late filing penalties imposed for both tax years and the estimated tax penalty imposed for the 2015 tax year. FTB denied the claims.
4. This timely appeal followed.

DISCUSSION

Issue 1: Whether appellant has established reasonable cause for failing to timely file its 2014 and 2015 tax returns.

R&TC section 19131 provides that a late filing penalty shall be imposed when a taxpayer fails to file a tax return on or before its due date, unless the taxpayer establishes that the late filing was due to reasonable cause and not due to willful neglect. The late filing penalty is calculated at 5 percent of the tax, for each month or a fraction thereof, that the return is late, with a maximum penalty of 25 percent of the tax. (R&TC, § 19131(a).) When FTB imposes a penalty, the law presumes that the penalty was imposed correctly. (*Appeal of Xie*, 2018-OTA-076P.) The taxpayer bears the burden of proving that reasonable cause exists to support an abatement of the penalty. (*Appeal of Triple Crown Baseball LLC*, 2019-OTA-025P.) To establish reasonable cause, the taxpayer must show that the failure to file timely returns occurred despite the exercise of ordinary business care and prudence, or that such cause existed as would prompt an ordinarily intelligent and prudent businessperson to have so acted under similar circumstances. (*Appeal of Head and Feliciano*, 2020-OTA-127P.) Unsupported assertions are insufficient to satisfy the taxpayer's burden. (*Ibid.*)

Here, appellant's 2014 and 2015 tax returns were due on April 15, 2015, and April 15, 2016, respectively. The tax returns were both filed more than two years after the due dates. Thus, without evidence to the contrary, it is presumed that FTB's determination is correct.

Appellant argues that the trustees had no prior experience as personal representatives and thus were not aware that there was a California filing requirement. Appellant contends that it relied on a certified public accounting firm (the Firm) for its guidance and professional expertise regarding all tax matters, but that the Firm never informed appellant that it was required to file a California return. Appellant contends that in 2018, the trustees explored hiring a new CPA to serve as an advisor and prepare appellant's tax returns. It was during an interview with a CPA that the trustees learned it should have filed California returns for the tax years at issue because the trustees were California residents. Once the trustees learned of this fact, appellant filed the required California returns.

Generally, ignorance of the law does not constitute reasonable cause because the taxpayer does not have to be a tax expert to know that tax returns have fixed filing dates. (*United States v. Boyle* (1985) 469 U.S. 241, 251.)² A taxpayer does not exercise ordinary business care and prudence when failing to acquaint itself with the requirements of California tax law. (*Ibid.*) Furthermore, the mere uninformed and unsupported belief of a taxpayer that it is not required to file a tax return, no matter how sincere that belief may be, is insufficient to constitute reasonable cause for its failure to file. (*Appeal of Morris and Forbes* (67-SBE-042) 1967 WL 1384.)

However, when a taxpayer relies on the expertise of a tax professional to determine whether a liability exists, it is reasonable for the taxpayer to rely on that advice. (*U.S. v. Boyle, supra*, 469 U.S. 241, 251.) If a taxpayer relies on the improper advice of an accountant or tax attorney as to a matter of tax law, failing to file a return in reliance on that advice may be considered reasonable cause if at least two conditions are met: (1) the person relied on is a tax professional with competency in the subject of tax law; and (2) the tax professional's advice is based on the taxpayer's full disclosure of the relevant facts and documents. (*Estate of La Meres v. Commissioner* (1992) 98 T.C. 294, 315-318.)

Here, appellant has provided very little information regarding the relationship between appellant and the Firm the trustees purportedly originally relied upon for guidance and professional expertise for the 2014 and 2015 tax years. Moreover, appellant has provided no supporting documentation or evidence to establish that appellant reasonably relied on the Firm's

² Because the relevant language of R&TC section 19131 pertaining to the reasonable cause exception is patterned after Internal Revenue Code (IRC) section 6651, federal court 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.)

advice, such as the timing of when the Firm’s services were sought, what services appellant requested of the Firm, who was involved in the request, what advice the Firm provided, or evidence that the Firm was a tax professional with competency in the subject of tax law. Based on the inadequacy of the information provided to us, we have no basis to abate the late filing penalty.

Issue 2: Whether appellant has established that the estimated tax penalty should be abated.

Except as otherwise provided, R&TC section 19136 conforms to IRC section 6654 and imposes an estimated tax penalty for the failure to timely make estimated income tax payments. (R&TC, § 19136(a); IRC, § 6654(l).) The estimated tax penalty is similar to an interest charge and applies from the due date of the estimated tax payment until the date it is paid. (IRC, § 6654(b)(2); *Appeal of Johnson*, 2018-OTA-119P.) There is no general reasonable cause exception for the estimated tax penalty. (*Appeal of Johnson*, *supra*.) Instead, IRC section 6654(e)(3)(A) provides a limited exception to waive the penalty if, by reason of casualty, disaster, or other unusual circumstances, imposing the penalty would be against equity and good conscience.

Appellant only argues that the penalty should be abated based on reasonable cause, and we do not find that the evidence establishes waiving the penalty due to casualty, disaster, or other unusual circumstances. Accordingly, the estimated tax penalty cannot be waived.

HOLDINGS

1. Appellant has not established reasonable cause for failing to timely file the 2014 and 2015 tax returns.
2. Appellant has not established that the estimated tax payment should be abated.

DISPOSITION

FTB’s action is sustained in full.

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Andrea L.H. Long

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Andrea L.H. Long

Administrative Law Judge

We concur:

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Tommy Leung

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Tommy Leung

Administrative Law Judge

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Amanda Vassigh

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Amanda Vassigh

Administrative Law Judge

Date Issued: 3/4/2021