

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:

L. MIAO AND
K. MURAKI

) OTA Case No. 19125642
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OPINION

Representing the Parties:

For Appellants: Diane M. Lichtenstein

For Respondent: Eric A. Yadao, Tax Counsel III

H. LE, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, L. Miao and K. Muraki (appellants) appeal an action by Franchise Tax Board (respondent) denying appellants’ claim for refund of \$21,787.75 for the 2017 tax year.

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

ISSUE

Whether appellants have established reasonable cause for failing to timely file their tax return.

FACTUAL FINDINGS

1. Appellants’ accountant erred in untimely filing their 2017 California income tax return on May 24, 2019, which was about one year after the April 15, 2018 due date.
2. The following month, respondent issued a Notice of Tax Return Change—Revised Balance, imposing a late-filing penalty of \$21,787.75, along with unpaid tax, an estimated tax penalty, and applicable interest.
3. Appellants filed a penalty waiver request to abate the late-filing penalty due to reasonable cause, paid the revised balance due, and filed a refund claim.

4. Respondent denied appellants' penalty waiver request and claim for refund for lack of reasonable cause. This timely appeal followed.

DISCUSSION

The late-filing penalty shall not apply if a taxpayer establishes that the failure to file a return within the prescribed deadline was due to reasonable cause and not willful neglect. (R&TC, § 19131(a).) The standard of reasonable cause requires the taxpayer to establish that the failure to timely file occurred despite the exercise of ordinary business care and prudence. (*United States v. Boyle* (1985) 469 U.S. 241, 246.)¹ Taxpayers carry the burden of establishing that reasonable cause exists to abate the penalty. (*Appeal of Beadling* (77-SBE-021) 1977 WL 3831.)

Appellants contend that the late-filing penalty should be abated because they relied on their accountant to timely file their 2017 return and that this accountant assured them that their 2017 return had been filed. Appellants further contend that their accountant immediately filed their return upon discovering the error and that they have good filing and payment history. However, we find these contentions unpersuasive.

Here, appellants' reliance on their accountant does not qualify as reasonable cause because they had a personal, non-delegable duty to timely file their tax return. (*United States v. Boyle, supra*, at p. 251-252.) Although appellants allege that their accountant verbally informed them that the return had been timely transmitted, we believe an ordinarily intelligent and prudent businessperson would have viewed the e-file history and acknowledgment records to confirm whether the return had indeed been timely transmitted and accepted. (See *Appeal of Quality Tax & Financial Services, Inc.*, 2018-OTA-130P.) Appellants also claim their accountant immediately filed their return upon discovering the error, but they have not demonstrated how their actions at the filing deadline constituted reasonable cause. (*Morrissey v. Commissioner*,

¹ Because the relevant language of R&TC section 19131 pertaining to the reasonable cause exception is patterned after Internal Revenue Code section 6651, the federal courts' interpretation of the "reasonable cause" standard is persuasive authority in determining the proper construction of this California statute. (*Andrews v. Franchise Tax Bd.* (1969) 275 Cal.App.2d 653, 658; *Rihn v. Franchise Tax Bd.* (1955) 131 Cal.App.2d 356, 360.)


T.C. Memo. 1998-443.) Finally, California law does not provide for penalty abatement based upon a history of good filing and payment compliance.²

HOLDING


Appellants failed to establish reasonable cause for failing to timely file their tax return.

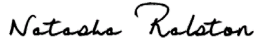
DISPOSITION

Respondent’s action is sustained.

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Administrative Law Judge

We concur:

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Kenneth Gast
Administrative Law Judge

DocuSigned by:

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Natasha Ralston
Administrative Law Judge

Date Issued: 9/22/2020

² The California Legislature has previously considered and declined to adopt bills that would allow a first-time abatement for taxpayers with a history of good filing and payment compliance. (See, e.g., Assembly Bill No. 1777 (2013-2014 Reg. Sess.))