

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 20056203
A. BRIGHT AND)
F. BOSSART BRIGHT)
_____)

OPINION

Representing the Parties:

For Appellants: Anne C. Patefield,
PricewaterhouseCoopers LLP

For Respondent: Eric R. Brown, Tax Counsel III

A. ROSAS, Administrative Law Judge: Under Revenue and Taxation Code (R&TC) section 19324, appellants A. Bright and F. Bossart Bright appeal respondent Franchise Tax Board’s action in denying appellants’ claim for refund totaling \$2,149.87 for tax year 2018.¹ Appellants waived their right to an oral hearing, and therefore we decide this matter based on the written record.

ISSUE

Whether appellants’ failure to timely file their tax return for tax year 2018 was due to reasonable cause.

FACTUAL FINDINGS

1. Appellants untimely filed their 2018 California Resident Income Tax Return on October 22, 2019. They reported a tax due of \$12,551 and self-assessed interest and penalties for a total due of \$14,062.

¹ This appeal concerns appellant’s request for abatement of the late-filing penalty. This penalty was in the sum of \$3,137.75. However, appellants’ claim for refund was in the sum of \$2,149.87, which is the balance stated in an Income Tax Due Notice respondent sent to appellants following the filing of their tax return and was the balance due after credit for payments. Despite the discrepancy between the amount of the penalty and the amount of the claim for refund, it is clear that the amount at issue in this appeal is the full amount of the late-filing penalty (i.e., \$3,137.75).

2. Appellants remitted payment of \$14,062 on November 7, 2019, but five days later, unaware that appellants had mailed their payment, respondent sent appellants a State Income Tax Balance Due Notice, indicating that the total due was \$16,208.64. The total due included the \$3,137.75 late-filing penalty at issue here.
3. In an Income Tax Notice dated December 30, 2019, the account balance summary for appellants indicated receipt of their \$14,062 payment and showed a balance due of \$2,149.87. Appellants timely paid this balance in early January 2020.
4. At the end of the month, appellants submitted a claim for refund for \$2,149.87, requesting an abatement of the late-filing penalty based on reasonable cause. On March 25, 2020, respondent denied appellants' claim for refund, and this timely appeal followed.

DISCUSSION

Because appellants failed to timely file their 2018 California tax return by April 15, 2019, or by the automatic six-month extension, respondent imposed a late-filing penalty of \$3,137.75. Respondent imposes this penalty when a taxpayer does not timely file a return, unless it is shown that the failure to timely file was due to reasonable cause and not due to willful neglect. (R&TC, § 19131(a).) When respondent imposes this penalty, the law presumes that it is correct. (*Appeal of Xie*, 2018-OTA-076P.) A taxpayer has the burden of establishing reasonable cause. (*Appeal of Scott* (82-SBE-249) 1982 WL 11906.) Appellants do not dispute the late-filing penalty computation, and there are no allegations of willful neglect in this appeal. Thus, our sole focus here is on reasonable cause. As a general matter, for a taxpayer to establish that a failure to act was due to reasonable cause, the taxpayer must show that the failure occurred despite the exercise of ordinary business care and prudence, or that cause existed as would prompt an ordinarily intelligent and prudent businessperson to have so acted under similar circumstances. (*Appeal of Bieneman* (82-SBE-148) 1982 WL 11825.)

The applicable standard of proof is by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(c).) That is, a party must establish by documentation or other evidence that the circumstances it asserts are more likely than not to be correct. (*Concrete Pipe and Products of California, Inc. v. Construction Laborers Pension Trust for Southern California* (1993) 508 U.S. 602, 622.) In other words, the preponderance of the evidence standard means more than 50 percent. (*Union Pacific Railroad Co. v. State Bd. of Equalization* (1991) 231

Cal.App.3d 983, 1000.) Taxpayers must provide credible and competent evidence to support the claim of reasonable cause; otherwise the penalties will be not be abated. (*Appeal of Walshe* (75-SBE-073) 1975 WL 3557.)

Appellants argue that they are foreign nationals who became U.S. residents in 2018 and, as result, this was the first tax year in which they needed to declare income from all sources, including worldwide sources. They argue that their failure to timely file their tax return was due to reasonable cause because of the complexities involved with gathering income information, which included information from foreign sources and foreign trusts. We understand appellants' assertions about their difficulties in gathering foreign information. However, as respondent pointed out in its opening brief, and as we further discuss below, "appellants have not indicated what steps they took to obtain the information prior to the due date of the return, nor do they discuss the difficulty associated with obtaining the information in the first place, other than that it involved income from foreign sources. Appellants do not provide any evidence in support of their contention or of the steps they took to obtain missing information in order to timely file their return." From an evidentiary perspective, unsupported assertions are insufficient to satisfy the taxpayer's burden of proof. (*Appeal of Magidow* (82-SBE-274) 1982 WL 11930.)

In short, appellants provide us with argument, not evidence. It is well established that argument is not evidence. (*People v. Cash* (2002) 28 Cal.4th 703, 734; *Hoffman v. Brandt* (1966) 65 Cal.2d 549, 552; *Mel Williamson, Inc. v. United States* (1982) 229 Ct.Cl. 846, 848; Evid. Code, § 140.) Moreover, an assertion regarding a lack of documentation or difficulty in calculating a tax liability does not, by itself, constitute reasonable cause. (*Appeal of Moren*, 2019-OTA-176P.) Appellants present no evidence to show, nor which tends to show, that they made diligent efforts to obtain information from the foreign sources or that appellants made any other efforts to file their 2018 return timely. Taxpayers have an obligation to file returns timely, with the best information available, and, if necessary, taxpayers may subsequently file an amended return. (*Appeal of Xie*, 2018-OTA-076P.) In addition, although appellants reference their good compliance history, unlike the federal First Time Penalty Abatement program, the State of California has not adopted a comparable penalty abatement program. (*Ibid.*)

Due to the lack of evidence and appellants' inability to meet their burden of proof, we find that they did not establish that the late filing was due to reasonable cause.

HOLDING

Appellants did not show that the failure to timely file their tax return for tax year 2018 was due to reasonable cause.

DISPOSITION

We sustain respondent’s denial of appellants’ claim for refund.

DocuSigned by:
Alberto T. Rosas
B969EE4BD4914D5
Alberto T. Rosas
Administrative Law Judge

We concur:

DocuSigned by:
E. L. Ewing
2D8DE82FB65F4A6
Elliott Scott Ewing
Administrative Law Judge

DocuSigned by:
Kenneth Gast
4283B8CD40F34BC
Kenneth Gast
Administrative Law Judge

Date Issued: 11/18/2020