OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **R. MAURITZSON AND** **C. MAURITZSON**	) OTA Case No. 20015672)))))

OPINION

Representing the Parties:

For Appellants:	Aletheia Preston, Tax Appeals Assistance Program (TAAP)[1]
For Respondent:	David Muradyan, Tax Counsel III
For Office of Tax Appeals:	Oliver Pfost, Tax Counsel

D. CHO, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, R. Mauritzson and C. Mauritzson (appellants) appeal an action by respondent Franchise Tax Board denying appellants' claim for refund of $1,614.25 for the 2017 tax year.

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

ISSUE[2]

Whether appellants established reasonable cause for failing to timely file their 2017 California nonresident tax return.

[1] Appellants filed the opening brief; Dehra Di'Fiore-Moles of TAAP filed a reply brief; and Nick Wagener of TAAP filed a supplemental brief.

[2] Appellants' supplemental brief clarified that they were not seeking relief of any interest that accrued on the late-filing penalty. Thus, we do not address this issue any further. Appellants also stated that they would like an "accounting of how the Respondent calculated the interest on the penalty …." However, the Office of Tax Appeals (OTA) is a completely separate and independent agency from respondent. OTA's primary role is to determine the correct tax liability, and OTA does not have the authority to direct respondent to comply with appellants' request. To the extent that appellants wish to obtain this information, they should make this request to respondent.

FACTUAL FINDINGS

1. Appellants were residents of Idaho in 2017. Appellants were not residents of California in 2017.
2. RM Enterprises LLC (RM), alternatively named RMIP Enterprises LLC, was a limited liability company organized under Idaho state law and registered in California as a foreign limited liability company during the 2017 tax year. At all relevant times, appellants were the sole members of RM.
3. During the 2017 tax year, RM sold real property located in California.
4. RM filed a timely 2017 California S Corporation Franchise or Income Tax Return, which reported the sale of the California real property. RM filed a 2017 Schedule K-1 for each appellant, reporting that each appellant recognized a pro rata share of capital gain from the sale of this property.
5. Appellants did not file a 2017 California income tax return.
6. Through its Integrated Non-Filer Compliance Program, respondent obtained RM's Schedule K-1 filings, from which respondent determined that appellants received California-source income. Respondent also discovered appellants had not filed a 2017 California income tax return. Accordingly, respondent issued a Request for Tax Return (Request) to appellants.
7. Upon receipt of the Request, appellants filed a joint 2017 California Nonresident or Part-Year Resident Income Tax Return on May 3, 2019, which was more than one year past the original filing deadline of April 15, 2018. Appellants reported tax due of $6,457, which they paid with their return.
8. Respondent accepted appellants' self-assessed tax liability as shown on their return and imposed a late-filing penalty of $1,614.25, plus interest.
9. On July 22, 2019, appellants paid the late-filing penalty and interest. Afterwards, appellants filed a claim for refund of the payment of the late-filing penalty and interest. Appellants argued that they relied on a tax preparation software, and the tax preparation software did not instruct them to file a 2017 California income tax return.
10. Respondent denied the claim, and this timely appeal followed.

DISCUSSION

California imposes a penalty for failing to file a return on or before the due date, unless the taxpayer shows that the failure is due to reasonable cause and not due to willful neglect. (R&TC, § 19131.) The late-filing penalty is calculated at 5 percent of the tax due for each month or fraction of each month the return is late, with a maximum penalty of 25 percent of the tax due. (R&TC, § 19131(a).)

When respondent imposes a penalty, it is presumed to have been imposed correctly. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509; *Appeal of Xie*, 2018-OTA-076P.) A taxpayer may rebut this presumption by providing credible and competent evidence supporting abatement of the penalty for reasonable cause. (*Appeal of Xie*, *supra*.)

To establish reasonable cause, the taxpayer must show that the failure to file a timely return occurred despite the exercise of ordinary business care and prudence, or that such cause existed as would prompt an ordinarily prudent businessperson to have acted under similar circumstances. (*Appeal of Head and Feliciano*, 2020-OTA-127P.) The U.S. Supreme Court has held that "reasonable cause" is established when a taxpayer shows reasonable reliance on the advice of an accountant or attorney that it was unnecessary to file a return, even when such advice turned out to have been mistaken. (*United States v. Boyle* (1985) 469 U.S. 241, 250 (*Boyle*).) California follows *Boyle* in that a taxpayer's reliance on a tax adviser must involve reliance on substantive tax advice and not on simple clerical duties. (*Appeal of Berolzheimer* (86-SBE-172) 1986 WL 22860.)

There is no dispute that appellants filed their return more than a year after the due date, and there is no dispute as to the calculation of the penalty. The only issue on appeal is whether appellants have established reasonable cause for the late filing of their return. Appellants contend that they relied on their tax preparation software when they were filing their taxes for the 2017 tax year. Appellants explain that after inputting the correct information, the tax preparation software informed appellants that they did not need to file a California nonresident tax return. Instead, appellants assert that the tax preparation software instructed them to file an Idaho state income tax return only, which appellants did. Therefore, appellants argue that the step-by-step instruction provided by their tax preparation software is analogous to the substantive advice of a tax professional. Appellants further argue that they exercised ordinary busines care and prudence because they accurately entered their tax information into the tax preparation software,

and the tax preparation software did not instruct them to file a California nonresident tax return. Based on the foregoing, appellants contend that they have established reasonable cause for abatement of the late-filing penalty.

We are unaware of any controlling California authority that has addressed whether reliance on tax preparation software may be reasonable cause to abate a late-filing penalty imposed under R&TC section 19131. However, the U.S. Tax Court (Tax Court) has discussed whether reliance on tax preparation software is reasonable cause to abate the imposition of the federal accuracy-related penalty. (See *Bunney v. Commissioner* (2000) 114 T.C. 259; *Au v. Commissioner*, T.C. Memo. 2010-247; *Morales v. Commissioner*, T.C. Memo. 2012-341; *Langley v. Commissioner*, T.C. Memo. 2013-22; *Dasent v. Commissioner*, T.C. Memo. 2018-202.) The Tax Court has observed that "[t]ax preparation software is only as good as the information one inputs into it." (*Bunney v. Commissioner*, *supra*, 114 T.C. at p. 267.) A taxpayer must provide evidence that demonstrates the tax preparation software had a programming flaw or instructional error. (*Morales v. Commissioner*, *supra*.) Tax preparation software does not, by itself, constitute professional tax advice for which the Tax Court could rely upon for a reasonable cause analysis. (*Dasent v. Commissioner*, *supra*.)

We find these cases to be persuasive on this subject. Thus, appellants must demonstrate that the tax preparation software had a programming flaw or instructional error to establish reasonable cause. In other words, appellants must show that the error was due to the tax preparation software and not appellants' own error. (See *Bunney v. Commissioner*, *supra*, 114 T.C. 259; *Morales v. Commissioner*, *supra*.)

With respect to the programming flaw, appellants have not provided any evidence or information that the tax preparation software had such a programming flaw.

Although appellants have alleged that they received an erroneous instruction to only file an Idaho state tax return, appellants have not provided any supporting documentation to establish this fact, and unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (See *Appeal of Magidow* (82-SBE-274) 1982 WL 11930.) Nonetheless, even if appellants were able to provide the instruction, we would also need to see the information that appellants inputted into the tax preparation software because "[t]ax preparation software is only as good as the information one inputs into it." (*Bunney v. Commissioner*, *supra*, 114 T.C. at p. 267.) Appellants have not provided this information either. Thus, we have neither the evidence of

what was inputted into the tax preparation software nor what instruction was given to appellants. In other words, we do not have sufficient evidence to establish that the tax preparation software instructed appellants not to file a California nonresident tax return, and even if appellants could somehow establish this fact, there is insufficient evidence that the instruction was truly erroneous and not the result of an error made by appellants when inputting their information into the tax preparation software.

Based on the foregoing, we conclude that appellants have not met their burden of proof.

HOLDING

Appellants have not established reasonable cause for their failure to timely file their 2017 California nonresident tax return.

DISPOSITION

Respondent's action is sustained.

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Daniel Cho
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Daniel K. Cho
Administrative Law Judge

We concur:

DocuSigned by:
Nguyen Dang
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Nguyen Dang
Administrative Law Judge

DocuSigned by:
8A4294817A67463...
Andrew Wong
Administrative Law Judge

Date Issued: 4/14/2021