

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 21037356
)
M. KOCH AND)
A. KOHLER)
)
)

OPINION

Representing the Parties:

For Appellants: Martin Baharestani, CPA

For Respondent: David Muradyan, Tax Counsel III

N. DANG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. Koch and A. Kohler (appellants) appeal an action by the Franchise Tax Board (respondent) denying their claim for refund of \$1,200 for the 2019 tax year.

We decide this matter based on the written record because appellants waived their right to an oral hearing.

ISSUE

Whether appellants have established reasonable cause to abate the late-payment penalty.

FACTUAL FINDINGS

1. On April 28, 2020, appellants filed a timely joint 2019 California Resident Income Tax Return reporting a \$20,000 estimated tax payment and a balance due of \$106,210.
2. Prior to the July 15, 2020 payment deadline,¹ appellants paid the amount due as shown on their return. However, appellants did not make the reported \$20,000 estimated tax payment until after the payment deadline had passed. Thus, appellants did not timely pay their 2019 tax liability.
3. Accordingly, respondent assessed a \$1,200 late-payment penalty and applicable interest.

¹ Due to the COVID-19 pandemic, the payment deadline for the 2019 tax year was extended to July 15, 2020.

4. Appellants paid the assessment and filed a refund claim seeking penalty abatement based on reasonable cause.

DISCUSSION

The late-payment penalty shall not apply if the failure to pay the tax on or before the prescribed deadline was due to “reasonable cause” and not willful neglect. (R&TC, § 19132(a).) The standard of reasonable cause requires the taxpayer to establish that the failure to timely pay occurred despite the exercise of ordinary business care and prudence. (*Appeal of Triple Crown Baseball LLC*, 2019-OTA-025P.) On the other hand, “[t]he failure to timely remit the balance due on a tax liability caused by an oversight does not, by itself, constitute reasonable cause.” (*Appeal of Friedman*, 2018-OTA-077P.)

Respondent’s imposition of the penalty is presumed to be correct, and taxpayers bear the burden of proving reasonable cause. (*Appeal of Triple Crown Baseball LLC*, *supra*.) Unsupported assertions are insufficient to establish reasonable cause. (*Appeal of Scanlon*, 2018-OTA-075P.)

Appellants contend that there is reasonable cause for their late-payment due to the impact of the COVID-19 pandemic on their tax return preparer’s operations. Appellants argue that the pandemic caused staffing and workload issues which effectively prevented appellants’ tax return preparer from communicating with appellants to verify the accuracy of the information reported on their return.

Appellants provide no evidence in support, and this alone is fatal to their position. Without evidence of how, specifically, appellants’ tax return preparer was affected by the COVID-19 pandemic, we are unable to evaluate the credibility of appellants’ argument.

Regardless, appellants have a duty to verify the accuracy of the information reported on their return. The instructions contained on the return just above the signature line required appellants to examine the return, and to certify, under penalty of perjury, that the information contained therein is true, correct, and complete. Had appellants exercised the requisite level of care in reviewing their return, they would have realized that their tax return preparer had erroneously reported a \$20,000 estimated tax payment which they had not yet made and acted accordingly. Therefore, appellants’ failure to adequately review their return demonstrates that they did not exercise ordinary business care and prudence.

For the foregoing reasons, we conclude that penalty abatement is not warranted.

HOLDING

Appellants have not established reasonable cause to abate the late-filing penalty.

DISPOSITION

We sustain respondent’s action denying appellants’ refund claim for the 2019 tax year.

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Nguyen Dang
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Nguyen Dang
Administrative Law Judge

We concur:

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Sheriene Anne Ridenour
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Sheriene Anne Ridenour
Administrative Law Judge

DocuSigned by:
Amanda Vassigh
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Amanda Vassigh
Administrative Law Judge

Date Issued: 8/6/2021