

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 21027275
M. NABI AND)
T. NABI)
_____)

OPINION

Representing the Parties:

For Appellants: Michael D. Zeitlin, CPA

For Respondent: Simran Brar, Graduate Student Assistant

For Office of Tax Appeals: Rosa Lee Schwarz, Graduate Student Assistant

N. DANG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. Nabi and T. Nabi (appellants) appeal an action by the Franchise Tax Board (respondent) denying appellants’ claim for refund of \$3,469.50 for the 2018 tax year.

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

ISSUE

Whether the late-filing penalty should be abated.

FACTUAL FINDINGS

1. On September 28, 2020, respondent received appellants’ joint 2018 California Resident Income Tax Return.
2. Because this return was received after the filing deadline had passed, respondent assessed a late-filing penalty of \$3,469.50.
3. Appellants paid the amount due and filed a claim for refund seeking penalty abatement based on “reasonable cause.”

4. After considering appellants' claim for refund, respondent issued a letter denying appellants' claim for refund and this timely appeal followed.

DISCUSSION

A penalty shall be imposed for the failure to file a return on or before the due date unless it is shown that the late filing is due to reasonable cause and not due to willful neglect. (R&TC, § 19131(a).) To establish reasonable cause, the taxpayer must show that the failure to timely file a return occurred despite the exercise of ordinary business care and prudence. (*Appeal of GEF Operating Inc.*, 2020-OTA-057P.)

Respondent's imposition of the late-filing penalty is presumed to be correct, and the burden of proof is on the taxpayer to establish otherwise. (*Appeal of Xie*, 2018-OTA-076P.) Unsupported assertions are insufficient to meet this burden. (*Ibid.*)

Appellants raise several arguments in support of their position that the late-filing penalty should be abated. Appellants first contend that their return preparer had timely e-filed their 2018 return on October 15, 2019. Alternatively, should we find otherwise, appellants contend that their reliance on an agent to timely file their return constitutes reasonable cause to abate the penalty. In support, appellants provided a form 8879¹ dated October 15, 2019, authorizing their return preparer to e-file their 2018 return.

Appellants also assert that the late-filing penalty should be abated because they have a longstanding history of timely filing, and this is the first time, through no fault of their own, that they failed to do so.

Based on a lack of supporting evidence and well-established legal principles, we find these arguments to be unavailing. For instance, the record shows that respondent received appellants' 2018 return on September 28, 2020, which is nearly a year after the October 15, 2019 due date (including the automatic six-month extension). (R&TC, §§ 18566, 18567.) Appellants' form 8879 does not indicate that appellants' 2018 return was transmitted to, and acknowledged by, respondent, on October 15, 2019, and therefore, it is insufficient to establish that this return was filed on that date. Accordingly, we find appellants late filed their 2018 return on September 28, 2020.

¹ This form is entitled "California e-file Signature Authorization for Individuals."

In addition, it is well established that the failure of an agent to timely file does not constitute reasonable cause. (*Appeal of Quality Tax & Financial Services, Inc.*, 2018-OTA-130P citing *U.S. v. Boyle* (1985) 469 U.S. 241, 252.) Taxpayers have a non-delegable duty to ensure the timely filing of their returns. (*Ibid.*) In other words, appellants failed to exercise ordinary business care and prudence when they relied solely on their return preparer to timely file their 2018 return and took no personal actions to verify and ensure that the return was filed in a timely manner.

Finally, we note that the late-filing penalty may only be abated upon a showing of reasonable cause. (*Appeal of Xie, supra.*) Thus, appellants' history of timely filing their returns, while commendable, is not relevant to the disposition of this appeal.²


For the foregoing reasons, we find no basis for abating the penalty.

HOLDING

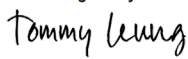
Appellants have not shown that the late-filing penalty should be abated.


DISPOSITION

Respondent's denial of appellants' claim for refund is sustained.

DocuSigned by:

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Nguyen Dang
Administrative Law Judge

We concur:

DocuSigned by:

0C90542BE88D4E7...
Tommy Leung
Administrative Law Judge

DocuSigned by:

DC88A60D8C3E442...
Keith T. Long
Administrative Law Judge

Date Issued: 9/8/2021

² While the IRS has an administrative program called "First Time Abate," under which it will abate a late-filing penalty if a taxpayer has timely filed returns and paid tax for the past three years, neither the California Legislature nor respondent has adopted a comparable penalty abatement program.