

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 20056166
L. TRAGESER AND)
N. MINASIAN)
_____)

OPINION

Representing the Parties:

For Appellants: L. Trageser

For Respondent: Joel M. Smith, Tax Counsel III

K. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, L. Trageser and N. Minasian (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$3,524.25 for the 2017 tax year.

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

ISSUES

1. Whether appellants have established reasonable cause to abate the late-filing penalty.
2. Whether appellants are entitled to abatement of the underpayment of estimated tax penalty (estimated tax penalty).

FACTUAL FINDINGS

1. Appellants did not file a California resident income tax return for the 2017 tax year.
2. FTB received information indicating that appellants received sufficient income to require them to file a return. On April 26, 2019, FTB issued a notice requesting that appellants file a return or explain why no return was required.¹

¹ For the 2017 tax year, the minimum California adjusted gross income filing threshold for taxpayers using the married filing jointly status with no dependents was \$34,060.

3. On September 8, 2019, appellants filed a joint 2017 California resident income tax return (Form 540). Appellants included payment of tax due of \$12,961 and a self-assessed estimated tax penalty of \$284.
4. On September 16, 2019, FTB issued a Notice of Tax Return Change – Revised Balance, imposing a late-filing penalty of \$3,240.25 and interest of \$1,107.18.² Appellants subsequently paid the revised balance.
5. FTB received a letter from appellant’s CPA requesting abatement of the late payment penalty and the estimated tax penalty, which FTB accepted as a timely claim for refund. In the letter, appellants explained that the tax liability was larger than they anticipated for 2017.³
6. On January 22, 2020, FTB denied the claim for refund explaining that appellants did not establish reasonable cause for abatement of the penalty.
7. This timely appeal followed.

DISCUSSION

Issue 1: Whether appellants have established reasonable cause to abate the late-filing penalty.

An individual taxpayer filing on a calendar year basis has three and a half months following the close of the calendar year (i.e., until April 15) to timely file his or her personal income tax return. (R&TC, § 18566.)⁴ R&TC section 19131 imposes a late-filing penalty where a taxpayer fails to file a return when due, unless the failure is due to reasonable cause and not willful neglect. The penalty is calculated at five percent of the tax liability for each month the return is past due, up to a maximum of 25 percent. (R&TC, § 19131.) When FTB imposes a

² On appeal, appellants do not assert or make any arguments that they are entitled to interest abatement. Moreover, appellants did not assert that they were entitled to interest abatement in their claim for refund. Accordingly, we find that the accrued interest is not at issue and will not discuss it further.

³ In appellants’ protest to FTB, their accountant requested a one-time abatement. We note that the IRS administers a program called “First Time Abate” under which it abates first-time timeliness penalties if a taxpayer has timely filed returns and paid taxes due for the preceding three years. However, FTB has no such program, and California law allows abatement only on a showing that the failure to timely file a return was due to reasonable cause. On appeal, appellants do not make further assertions requesting a one-time abatement. Therefore, this will not be discussed further.

⁴ FTB allows an automatic six-month extension to file a tax return if a taxpayer files the return within six months of the original due date (i.e., by October 15). (R&TC, § 18567(a); Cal. Code Regs., tit. 18, § 18657(a).) If a taxpayer does not file his or her return by the extended due date, however, FTB does not allow the extension. (Cal. Code Regs., tit. 18, § 18567(a).)

penalty, the law presumes that FTB properly imposed the penalty. (*Appeal of Xie*, 2018-OTA-076P.)

Here, there is no dispute that appellants failed to file a timely return for 2017. Thus, FTB properly imposed a late-filing penalty. Appellants also do not dispute the calculation of the penalty. Instead, appellants assert that there is reasonable cause for their failure to timely file a return for the 2017 tax year.

A taxpayer must provide credible and competent evidence supporting a claim of reasonable cause to overcome this presumption of correctness. (*Appeal of Xie, supra.*) To establish reasonable cause, a taxpayer must show that the failure to file timely returns 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 Auburn Old Town Gallery, LLC*, 2019-OTA-31P.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.)

Here, appellants claim reasonable cause exists because of their reliance on an accountant to file their returns. However, every taxpayer has a personal, non-delegable obligation to file a tax return by the due date. (*United States v. Boyle* (1985) 469 U.S. 241, 252.) Therefore, appellants' claimed reliance on their accountant is not considered to be reasonable cause.

While the foregoing is dispositive, we note that appellant provided text message correspondence to and from their accountant in support of the contention that they attempted to file a timely return. Upon review, it appears that there are two different sets of text messages. Specifically, appellants provided text messages for the period September 26, 2018, through December 20, 2018. Appellants also provided text messages dated June 17, and June 18, with no identifying year. As such, it is impossible to determine either the timeframe or the completeness of some of appellants' text messages.

As to the text messages themselves, we note that none of the text messages are dated before the April 15, 2018 due date to file a return. Consequently, we find no evidence that appellants attempted to file a return on or before the April 15, 2018 due date.

Additionally, only one of the text message exchanges provided for the period September 26, 2018, through December 20, 2018, occurred prior to the extended due date of October 15, 2018. Specifically, on September 26, 2018, appellants asked to meet with their

CPA. In response appellants' accountant indicated that he was available after ten days. The next correspondence is dated October 22, 2018, after the extended due date to file a return. There is no evidence that appellants attempted to meet with their accountant after the September 26, 2018 text message and before the extended due date of October 15, 2018. As such, we cannot conclude that appellants' failure to file a timely return occurred despite the exercise of ordinary business care and prudence. Even if appellants' text messages established that they attempted to file a return by the October 15, 2018 due date, they do not explain why appellants failed to file a return until September 2019, nearly a full year later.

Finally, appellants' contention that they believed the return to be timely filed directly conflicts with the evidence. For example, on December 20, 2018, appellants accountant stated "I can't meet today and I need to finish the returns over the weekend. We can shoot for next week." Based on this evidence, appellants must have known that their return was not timely filed. Thus, based on all of the foregoing, we find that appellant has not established that reasonable cause exists to abate the late-filing penalty.

Issue 2: Whether appellant is entitled to abatement of the underpayment of estimated tax penalty.

California conforms to Internal Revenue Code (IRC) section 6654, and imposes an estimated tax penalty for the failure to timely make estimated income tax payments. (R&TC, § 19136(a); IRC, § 6654.) For California purposes, installment tax payments are due on April 15, June 15, and January 15 of the following tax year. (R&TC, § 19136.1; IRC, § 6654(c)(2).) The estimated tax penalty is similar to an interest charge and applies from the due date of the estimated tax payment until the date it is paid or April 15 of the following year, whichever comes first. (IRC, § 6654(b)(2); *Appeal of Johnson*, 2018-OTA-119P.) There is no general reasonable cause exception for the estimated tax penalty. (*Appeal of Johnson, supra.*)


Here, appellants make the same reasonable cause arguments for the estimated tax penalty as they do for the late-filing penalty. As noted above, there is no reasonable cause exception applicable for the estimated tax penalty here. Further, appellants' assertions as to why their return was filed late do not explain their failure to make timely and correct estimated payments of tax. Therefore, we need not discuss appellants' reasonable cause argument as it relates to this penalty and the estimated tax penalty is not abated.

HOLDINGS

1. Appellants have not established reasonable cause to abate the late-filing penalty.
2. Appellants are not entitled to abatement of the estimated tax penalty.


DISPOSITION

We sustain respondent’s action.


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 Keith T. Long
 Administrative Law Judge

We concur:

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 Tommy Leung
 Administrative Law Judge

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 Natasha Ralston
 Administrative Law Judge

Date Issued: 10/19/2021