

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 21017106
J. REICHENBERG AND)
J. REICHENBERG)
_____)

OPINION

Representing the Parties:

For Appellants: Martin Friedrich, CPA

For Respondent: Noel Garcia, Tax Counsel

N. DANG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. Reichenberg and J. Reichenberg (appellants) appeal an action by the Franchise Tax Board (respondent) denying their claim for refund of \$7,434.00 for the 2018 tax year.¹

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

ISSUE

Whether there is reasonable cause to abate the late-filing penalty.

FACTUAL FINDINGS

1. On October 15, 2019, appellants' tax return preparer notified appellants that their 2018 joint California income tax return (Return) was ready for processing and there would be a balance due. Appellants' tax return preparer also requested that appellants execute and return electronic filing and funds transfer authorization forms so that their Return could be filed on the same day.
2. Appellants responded on the same day with the requisite forms authorizing their tax return preparer to electronically file their Return and pay the balance due via electronic funds transfer.

¹ On appeal, appellants dispute only the \$6,071.75 late-filing penalty.

3. For unknown reasons, the Return was not timely filed.
4. On November 6, 2019, appellants notified their tax return preparer that the anticipated electronic withdrawal for their 2018 tax liability had not occurred. Appellants thereafter sent respondent a check for the balance, which was credited on November 14, 2019.
5. Appellants did not file the Return until March 11, 2020.
6. Consequently, respondent assessed a late-filing penalty (among other things).
7. Appellants paid the balance due and filed a timely refund claim asserting there is “reasonable cause” to abate the late-filing penalty.
8. Respondent denied appellants’ refund claim 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 argue that the penalty should be abated because they exercised the requisite level of care in ensuring the timely filing of the Return. Appellants point to the fact that they submitted an e-file authorization form to their tax return preparer and relied on this individual to file the Return on the due date, as they were assured would be done. While we are sympathetic to appellants’ situation, longstanding precedent on this issue compels us to conclude otherwise.

The U.S. Supreme Court has established a bright-line rule that each taxpayer has a personal, non-delegable obligation to ensure the timely filing of a tax return, and thus, reliance on an agent to perform this act does not constitute reasonable cause to abate a late-filing penalty. (*U.S. v. Boyle* (1985) 469 U.S. 241, 251-252 (*Boyle*).) In *Boyle*, the executor of an estate relied upon an attorney to timely file an estate tax return. However, due to a clerical error, the attorney did not timely file the return. The U.S. Supreme Court held in this instance that:

“The time has come for a rule with as ‘bright’ a line as can be drawn consistent with the statute and implementing regulations. Deadlines are inherently arbitrary; fixed dates, however,

are often essential to accomplish necessary results. The Government has millions of taxpayers to monitor, and our system of self-assessment in the initial calculation of a tax simply cannot work on any basis other than one of strict filing standards. Any less rigid standard would risk encouraging a lax attitude toward filing dates. Prompt payment of taxes is imperative to the Government, which should not have to assume the burden of unnecessary ad hoc determinations.

“Congress has placed the burden of prompt filing on the executor, not on some agent or employee of the executor. The duty is fixed and clear; Congress intended to place upon the taxpayer an obligation to ascertain the statutory deadline and then to meet that deadline, except in a very narrow range of situations.” (*Boyle, supra*, 469 U.S. 241 at pp. 248-250.)

The Office of Tax Appeals has consistently applied the above rule set forth in *Boyle* to income tax returns required to be filed with respondent. (See, e.g., *Appeal of Quality Tax & Financial Services, Inc.*, 2018-OTA-130P.) Appellants however attempt to distinguish *Boyle* on grounds that this case was decided many years before electronic filing was commonplace. Appellants assert that their tax return preparer had prepared the Return prior to the due date, and thus, their submission of an e-file authorization form to their tax return preparer should be considered the present-day equivalent of mailing a tax return to respondent. Appellants conclude that in this situation, unlike the taxpayer in *Boyle*, there is nothing further they could have done to ensure that the return was timely filed.

We are not persuaded by appellants’ contention that *Boyle* is inapplicable here. Among several reasons expressed in *Boyle* for placing responsibility fully upon the taxpayer for ensuring that a tax return is timely filed, is because “It requires no special training or effort to ascertain a deadline and make sure that it is met.” (*Boyle, supra*, 469 U.S. 241 at p. 252.) This remains true even where a tax return is electronically filed.

Appellants incorrectly assume that once they had executed an electronic filing authorization form, no further action was required on their part due to their inability to perform the final steps of electronically transmitting the Return to respondent. To the contrary, the exercise of ordinary business care and prudence requires that taxpayers do more than merely perform and/or delegate the tasks necessary to electronically file. It also requires the taxpayer to personally verify that the tax return was successfully transmitted, and, where it has not been, to take the appropriate corrective actions. (*Appeal of Quality Tax & Financial Services, Inc., supra.*)

Here, appellants did not take any steps to verify the electronic filing of their return, such as contacting respondent for confirmation or obtaining an electronic postmark from their tax return preparer. Rather, appellants chose to rely solely on the representations of their tax return preparer that the Return had been filed as promised, despite some indication shortly thereafter that there may have been issues with the filing of the Return. Appellants must therefore bear the consequences of that decision.

Accordingly, we find that appellants have not shown that there is reasonable cause to abate the penalty.

HOLDING

There is no reasonable cause to abate the late-filing penalty

DISPOSITION

We sustain respondent’s action.

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Nguyen Dang
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Nguyen Dang
Administrative Law Judge

We concur:

DocuSigned by:
Andrea L.H. Long
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Andrea L.H. Long
Administrative Law Judge

DocuSigned by:
E. S. Ewing
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Elliott Scott Ewing
Administrative Law Judge

Date Issued: 11/17/2021