

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:

K. LEE AND
B. SHORT

) OTA Case No. 21057708
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OPINION

Representing the Parties:

For Appellants: Nicholas P. Jones, CPA

For Respondent: Gi Jung Nam, Tax Counsel

N. DANG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, K. Lee and B. Short (appellants) appeal an action by the Franchise Tax Board (respondent) denying their claim for refund of \$1,330.60 for the 2019 tax year.

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. Appellants engaged the services of a tax return preparer to prepare and file their joint 2019 California Nonresident or Part-Year Resident Income Tax Return (Return).
2. The Return was not timely filed.
3. Consequently, respondent imposed a late-filing penalty and interest.
4. Appellants paid the amount due and filed a refund claim seeking penalty abatement due to “reasonable cause.”
5. 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 upon the taxpayer to establish otherwise. (*Appeal of Xie*, 2018-OTA-076P.) Unsupported assertions are insufficient to meet this burden. (*Ibid.*)

Appellants contend there is reasonable cause to abate the penalty because they relied upon a tax return preparer to prepare and timely file the Return. Appellants argue that their tax return preparer was unable to timely file the Return due to difficulties arising from the COVID-19 pandemic which caused it to experience severe staffing shortages during a time of unprecedented demand.

We decline to accept appellants' wholly unsupported assertion that their tax return preparer's inability to timely file the Return was due to COVID-19 related difficulties, and this alone is fatal to their position.

Appellants' position also finds no support in the law. We have consistently held that taxpayers have a personal, non-delegable duty to ensure the timely filing of their tax returns and therefore mere reliance upon 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.) Thus, the reasons for why appellants' tax return preparer did not timely file the Return are insufficient to demonstrate that appellants themselves acted with ordinary business care and prudence. Instead, in making this determination, we must also look to what actions appellants personally undertook to ensure the timely filing of the Return.

Other than retaining the services of a tax return preparer, appellants have not shown they took any further steps to ensure that the Return was timely filed. At a minimum, the exercise of ordinary business care and prudence required appellants to follow up with their tax return preparer prior to the due date to ascertain whether the Return could have been timely filed and to make reasonably certain that it was. In the event their tax return preparer was incapable of performing this action, it was thereafter incumbent upon appellants to take the appropriate steps

necessary to ensure the Return was timely filed. For instance, appellants might have prepared and filed the Return themselves or found another tax return preparer who could do so before the due date. Appellants’ failure to take any of these actions indicates that they did not exercise the requisite level of care to ensure the timely filing of the Return.

Accordingly, we find that appellants have not met their burden of establishing reasonable cause.

HOLDING

There is no reasonable cause for abating the late-filing penalty.

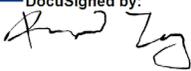
DISPOSITION

We sustain respondent’s action.

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Nguyen Dang
Administrative Law Judge

We concur:

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Richard Tay
Administrative Law Judge

DocuSigned by:

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Tommy Leung
Administrative Law Judge

Date Issued: 11/17/2021