

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:

J. ALLEN AND
L. ALLEN

) OTA Case No. 21037403
)
)
)
)
)

OPINION

Representing the Parties:

For Appellants: Steven J. Thunell, CPA

For Respondent: Tristen Thalhuber,
Graduate Student Assistant

S. RIDENOUR, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. Allen and L. Allen (appellants) appeal actions by respondent Franchise Tax Board (FTB) denying appellants’ claims for refund of \$920.25 and \$1,043.00 for the 2017 and 2018 tax years, respectively.

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

ISSUE

Whether appellants have established reasonable cause for failing to timely file their 2017 and 2018 tax returns.

FACTUAL FINDINGS

1. Appellants did not file a timely California return for the 2017 and 2018 tax years.
2. FTB received information from a company indicating that appellant-wife received California source income and had a California filing requirement for the 2017 tax year. On August 25, 2020, FTB sent appellant-wife a Request for Tax Return, requesting that she reply no later than September 30, 2020, by either filing her tax return for 2017, or by

- completing a provided questionnaire to determine whether she had a California filing requirement.
3. On September 28, 2020, appellants filed separate untimely joint California Nonresident Income Tax Returns (Form 540NR) for the 2017 and 2018 tax years. Appellants reported a tax due for each tax year, and remitted payment with the returns. FTB accepted the returns as filed.
 4. On October 12, 2020, FTB issued appellants a separate Notice of Tax Return Change – Revised Balance for each tax year. For the 2017 tax year, FTB notified appellants that it imposed a late-filing penalty of \$920.25, plus applicable interest. For the 2018 tax year, FTB notified appellants that it imposed a late-filing penalty of \$1,043.00, plus applicable interest.
 5. Appellants paid the outstanding liabilities and filed claims for refund, which FTB denied.
 6. This timely appeal followed.

DISCUSSION

California imposes a penalty for the failure to file a return on or before the due date, unless it is shown that the failure is due to reasonable cause and not due to willful neglect. (R&TC, § 19131.) When FTB imposes a penalty, the law presumes that the penalty was imposed correctly. (*Appeal of Xie*, 2018-OTA-076P.) To overcome the presumption of correctness attached to the penalty, a taxpayer must provide credible and competent evidence supporting a claim of reasonable cause; otherwise, the penalty cannot be abated. (*Ibid.*)

To establish reasonable cause, a taxpayer must show that the failure to file a timely return 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 GEF Operating, Inc.*, 2020-OTA-057P.)

There is no dispute that appellants filed untimely 2017 and 2018 California tax returns, and there is no dispute as to the calculation of the applicable late-filing penalties. The only issue on appeal is whether appellants have established reasonable cause for the late filing of their returns.

Appellants argue that they have reasonable cause for failing to timely file their 2017 and 2018 returns. Appellants contend they are residents of Utah and that Utah taxes its residents on their income from all sources. Appellants assert that they filed their original 2017 and 2018 tax

returns (i.e., federal and Utah) by themselves and that they did not know that they were required to file a California return for either tax year. Specifically, appellants assert that they were reasonable “to assume that by paying tax on all of their income to their home state they ha[d] done all that they need[ed] to do,” and this is further supported by them not knowing that they would have been entitled to an out-of-state credit on their Utah tax return for taxes remitted with a Form 540NR. Appellants contend that when they hired their representative, a CPA, to prepare their untimely 2017 and 2018 Forms 540NR, the representative indicated that very few of his clients would have known whether they had a filing requirement and that it was his professional opinion that appellants not knowing that they had a filing requirement is reasonable cause.

Even if a taxpayer is unaware of a filing requirement, ignorance of the law is not an excuse for failing to file a timely return. (*Appeal of GEF Operating, Inc., supra.*) Taxpayers who fail to acquaint themselves with the requirements of California tax law have not exercised ordinary business care and prudence. (*Appeal of Summit Hosting LLC, 2021-OTA-216P.*)

California taxes the income of nonresidents that is derived from California sources. (R&TC, § 17041(i)(1)(B).) Here, appellant-wife received California source income in 2017 and 2018 and, therefore, had a California tax return filing requirement for both tax years. Appellants argue that the late-filing penalties should be abated because they did not know that they were required to file a California return for either tax year. However, even if appellants were unaware of their filing requirement, ignorance of the law does not excuse compliance with statutory requirements. (*Appeal of GEF Operating, Inc., supra.*) Furthermore, appellants have not shown what steps, if any, they took before the deadline to ascertain whether appellant-wife was required to file a California return and pay California taxes on her California source income. Taxpayers who fail to acquaint themselves with the requirements of California tax law have not exercised ordinary business care and prudence. (*Appeal of Summit Hosting LLC, supra.*)

Furthermore, we are unpersuaded by appellants’ argument that this matter is distinguished from two cases that *Appeal of GEF Operating, Inc., supra*, references (i.e., *Appeal of Forbes* (67-SBE-042) 1967 WL 1384 and *Appeal of Diebold, Inc.* (83-SBE-002) 1983 WL 15389) and, therefore, the referenced cases and, consequently, *Appeal of GEF Operating, Inc., supra*, are not comparable as it relates to appellants’ reasonable cause. Specifically, appellants argue that since *Appeal of Forbes, supra*, references a federal case and filings with the IRS, and the taxpayer in *Appeal of Diebold, Inc., supra*, is a corporation that files multiple tax returns in

multiple states, neither case is comparable to appellants' reasonable belief that they did not have a filing requirement in California, a state in which they did not live. However, both federal and California definitions of reasonable cause for penalty abatement, regardless of how many tax returns a taxpayer files in a year, are comparable (see Treasury Regulation section 301.6651-1(c)), and, therefore, federal law is often looked at for guidance in applying California law. Appellants have provided no authority, and we are aware of none, stating that *Appeal of Forbes*, *supra*, or *Appeal of Diebold, Inc.*, *supra*, are not applicable to facts similar to appellants' situation. Appellants have also provided no authority, and we are aware of none, for their contention that it is "Also unreasonable...to make a blanket statement that not knowing a law is no excuse when there are thousands of laws in multiple jurisdictions. Once a taxpayer is aware of what is required, they can then be held to a higher standard." According to the United States Supreme Court, one does not need to be a tax expert to know that tax returns have fixed filing dates and taxes must be paid when due. (*United States v. Boyle* (1985) 469 U.S. 241, 251.)

We find that a review of the record does not show any facts and circumstances that would warrant a finding of reasonable cause for either tax year.

HOLDING

Appellants have not established reasonable cause for failing to timely file their 2017 and 2018 tax returns.

DISPOSITION

FTB’s actions denying appellants’ claims for refund are sustained.

DocuSigned by:
Sheriene Anne Ridenour
67F043D83EF547C...

Sheriene Anne Ridenour
Administrative Law Judge

We concur:

DocuSigned by:
Teresa A. Stanley
0CC6C6ACCC6A44D...

Teresa A. Stanley
Administrative Law Judge

DocuSigned by:
Daniel Cho
7B28A07A7E0A43D...

Daniel K. Cho
Administrative Law Judge

Date Issued: 12/16/2021