

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:

T. KORZEC AND
D. KORZEC

) OTA Case No. 21057834
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OPINION

Representing the Parties:

For Appellants:

T. Korzec
D. Korzec

For Respondent:

Brad J. Coutinho, Tax Counsel III

S. HOSEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, T. Korzec and D. Korzec (appellants) appeal actions by respondent Franchise Tax Board (FTB) denying appellants’ claims for refund totaling \$596.22 for the 2016, 2017 and 2018 tax years.

Appellants waived the 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 penalties for the tax years at issue.
2. Whether appellants have established a basis to abate interest accrued for the tax years at issue.

FACTUAL FINDINGS

1. Appellants filed their 2016 California nonresident income tax return on October 15, 2020.
2. FTB issued a Notice of Tax Return Change, which imposed a late-filing penalty, plus interest, for the 2016 tax year.
3. Appellants filed their 2017 California nonresident income tax return on October 15, 2020.

4. FTB issued a Notice of Tax Return Change, which imposed a late-filing penalty, plus interest, for the 2017 tax year.
5. Appellants filed their 2018 California nonresident income tax return on October 15, 2020.
6. FTB issued a Notice of Tax Return Change, which imposed a late-filing penalty, plus interest for the 2018 tax year.
7. FTB received payment from appellants on January 15, 2021, which satisfied the balances owed for the 2016, 2017, and 2018 tax years. FTB also received claims for refund for the late-filing penalties imposed, plus interest, for the tax years at issue.
8. FTB concluded that appellants did not establish reasonable cause for abating the late-filing penalties, and as a result, FTB denied the claims for refund for the 2016, 2017 and 2018 tax years, plus applicable interest.
9. Appellants filed this timely appeal.

DISCUSSION

Issue 1: Whether appellants have established reasonable cause to abate the late-filing penalties for the tax years at issue.

When FTB imposes a penalty, it is presumed to have been imposed correctly. (*Appeal of Xie*, 2018-OTA-076P.) A taxpayer may rebut this presumption by providing credible and competent evidence supporting abatement of the penalty for reasonable cause. (*Ibid.*)

To establish reasonable cause, the taxpayer must show that the failure to file a timely return occurred despite the exercise of ordinary business care and prudence, or that such cause existed as would prompt an ordinarily prudent businessperson to have acted under similar circumstances. (*Appeal of Head and Feliciano*, 2020-OTA-127P.) The U.S. Supreme Court has held that “reasonable cause” is established when a taxpayer shows reasonable reliance on the advice of an accountant or attorney that it was unnecessary to file a return, even when such advice turned out to have been mistaken. (*United States v. Boyle* (1985) 469 U.S. 241, 250 (*Boyle*)). California follows *Boyle* in that a taxpayer’s reliance on a tax adviser must involve reliance on substantive tax advice and not on simple clerical duties. (*Appeal of Mauritzon*, 2021-OTA-198P.)

There is no dispute that appellants filed their 2016, 2017, and 2018 tax returns late on October 15, 2020, and there is no dispute as to the calculation of the penalty. The issue on appeal is whether appellants have established reasonable cause for the late filing of their returns. Appellants contend that they relied on their tax preparer and believed their returns were done correctly until they switched accountants and were told they needed to file nonresident California income tax returns. To establish reasonable cause under *Boyle*, a taxpayer must show that it reasonably relied on a tax professional for substantive advice as to whether a tax liability exists and that (1) the person relied on by the taxpayer is a tax professional with competency in the subject tax law; and (2) the tax professional's advice is based on the taxpayer's full disclosure of relevant facts and documents. (*Boyle, supra.*)

In this appeal, no evidence has been produced showing that the professional tax preparer advised appellants that they did not have a California filing requirement. Furthermore, no evidence has been produced showing the steps taken by the professional tax preparer to ascertain whether appellants were required to file California tax returns, or evidence of the tax preparer's knowledge of California tax law. Appellants have also not shown that they provided full disclosure of the relevant facts and documents. The sole statement from appellants—that they relied on a professional tax preparer's advice not to file a California income tax return—is not sufficient to establish reasonable cause to abate the late-filing penalty. (*Appeal of Summit Hosting, LLC*, 2021-OTA-216P.)

Issue 2: Whether appellants have established a basis to abate interest accrued for the tax years at issue.

Interest must be assessed from the date a tax payment is due through the date that it is paid. (R&TC, § 19101.) Imposition of interest is mandatory; it is not a penalty, but is compensation for appellants' use of money after those funds should have been paid to the state. (*Appeal of Moy*, 2019-OTA-057P.) There is no reasonable cause exception to the imposition of interest. (*Ibid.*) Under R&TC section 19104,¹ FTB is authorized to abate or refund interest if

¹ To obtain relief from interest, a taxpayer must qualify under the waiver provisions of R&TC sections 19104, 19112, or 21012. (*Appeal of Balch*, 2018-OTA-159P.) However, R&TC section 21012 is not applicable in this case because FTB did not provide written advice to appellants. Additionally, R&TC section 19112 is not applicable in this case because the Office of Tax Appeals does not have the authority to review FTB's denial of a waiver of interest based on extreme financial hardship. (*Appeal of Moy, supra.*)

there has been an unreasonable error or delay in the performance of a ministerial or managerial act by an employee of FTB.

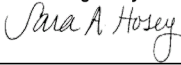
Here, appellants have not alleged, and the record does not reflect, any such errors or delays. Therefore, appellants have not established a basis to abate the interest accrued for the tax years at issue.

HOLDINGS


1. Appellants have not established reasonable cause to abate the late-filing penalties for the tax years at issue.
2. Appellants have not established a basis to abate interest accrued for the tax years at issue.

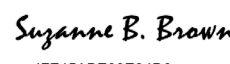
DISPOSITION

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

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 Sara A. Hosey
 Administrative Law Judge

We concur:

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 Amanda Vassigh
 Administrative Law Judge

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 Suzanne B. Brown
 Administrative Law Judge

Date Issued: 12/1/2021