

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 21067972
T. GUNN AND)
V. GUNN)
_____)

OPINION

Representing the Parties:

For Appellants: T. Gunn and V. Gunn

For Respondent: Gi Jung Nam, Tax Counsel

M. GEARY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, T. Gunn and V. Gunn (appellants) appeal an action by the Franchise Tax Board (respondent) denying appellants’ claim for refund of \$825.32 for the 2019 tax year.

This matter is being decided based on the written record because appellants waived the right to an oral hearing.

ISSUES

- 1. Are appellants entitled to abatement of the late-filing penalty?
- 2. Are appellants entitled to abatement of interest?

FACTUAL FINDINGS

- 1. On March 2, 2021, appellants filed their 2019 joint California Resident Income Tax Return, reporting tax and a penalty for underpayment of estimated tax due. The return was filed late by appellant’s paid tax preparer.¹
- 2. On March 10, 2021, respondent sent appellants a Notice of Tax Return Change – Revised Balance, informing appellants that, in addition to the reported tax due, respondent proposed to assess a late-payment penalty and interest.
- 3. On March 22, 2021, appellants paid their entire balance due.

¹ Unless otherwise indicated, all references are to the 2019 tax year.

4. On March 29, 2021, appellants filed a Reasonable Cause – Individual and Fiduciary Claim for Refund of \$825.32.
5. On April 22, 2021, respondent notified appellants that it denied the claim for refund. This timely appeal followed.

DISCUSSION

Issue 1: Are appellants entitled to abatement of the late-filing penalty?

Appellants were required to file their return and pay the taxes due on or before July 15, 2020. (R&TC, § 18566.)² Appellants filed their return over seven months late.

R&TC section 19131 requires respondent to impose a late-filing penalty when a taxpayer does not file its return on or before its due date, unless the taxpayer shows that the late filing was due to reasonable cause and not due to willful neglect.³ The law presumes that respondent correctly imposed the penalty, and the taxpayer has the burden of proving otherwise. (*Appeal of Xie*, 2018-OTA-076P.) To establish reasonable cause, the taxpayer must show that the failure to file timely returns occurred despite the exercise of ordinary business care and prudence, or that such cause existed as would prompt an ordinarily intelligent and prudent businessperson to have so acted under similar circumstances. (*Appeal of Head and Feliciano*, 2020-OTA-127P.)

Here, although appellants' arguments are not completely clear, it appears that they assert that they delegated responsibility for timely filing their return to a paid tax preparer and first learned that there was a problem when they inquired after not receiving their copy of the return. They allege that when they finally did inquire, they learned that the tax preparer had been hospitalized with COVID. Eventually, they learned that the tax preparer died. Appellants also assert that COVID disrupted their lives, requiring both to work long hours for their public transit employer, causing one of them to become ill, and causing the deaths of friends, co-workers, and members of their church.

² R&TC section 18566 provides that an individual return is due on April 15 of the year following the tax year. Respondent issued a March 18, 2020 News Release that confirmed a postponement of the 2019 tax filing and payment deadlines for all Californians to July 15, 2020.

³ Although R&TC section 18567 authorizes respondent to grant a taxpayer up to six more months to file a tax return, and the corresponding regulation provides for an automatic six-month extension without a written request (Cal. Code Regs., tit. 18, § 18567), if the taxpayer does not file the return by the extended due date, no valid extension exists, and the late-filing penalty amount is computed by reference to the original due date of the return. (*Ibid.*)

A taxpayer has a personal, nondelegable duty to file his or her tax return by the due date, and the taxpayer's reliance on a third party to fulfill that duty is not reasonable cause. (*United States v. Boyle* (1985) 469 U.S. 241, 252.) Furthermore, although illness or death may support a finding of reasonable cause, a taxpayer must prove that the asserted disruptive circumstances prevented him or her from filing the return by the due date. (*Appeal of Head and Feliciano, supra.*) With a joint return, the evidence must show that both taxpayers were prevented from filing the return by the due date. (*Ibid.*)

Appellants have not provided sufficient evidence to prove that disruptive circumstances resulting from the COVID pandemic (or any other cause) prevented them from filing their return by the deadline. Both appellants had a nondelegable duty to file the return by the due date, and the law does not allow them to shift responsibility to their tax preparer. What happened to their tax preparer is unfortunate, but it is not a valid basis for a finding of reasonable cause. In addition, appellants' vague assertions regarding how their lives and the lives of others have been disrupted by the pandemic are not sufficient under the law to establish reasonable cause. Appellants had months to prepare and file their return, and the evidence does not show that they were prevented from doing so by the due date. On this basis, we find that appellants are not entitled to abatement of the late-filing penalty.

Issue 2: Are appellants entitled to abatement of interest?

Taxes are due and payable as of the original due date of the taxpayer's return (without regard to any extension). (R&TC, § 19101.) If tax is not paid by the original due date, or if respondent assesses additional tax and that assessment becomes due and payable, the taxpayer is charged interest on the resulting balance due, compounded daily. (*Ibid.*) Interest is not a penalty but is merely compensation for a taxpayer's use of the money. (*Appeal of GEF Operating, Inc., 2020-OTA-057P.*)


Interest relief is allowed under only a few limited circumstances. (See R&TC, §§ 19104, 19112, and 21012.) None of those circumstances are present here. Appellants request interest relief on the grounds that their failure to file the return by the due date was due to reasonable cause. However, there is no reasonable cause exception to the imposition of interest. (*Appeal of GEF Operating, Inc., supra.*) Consequently, we find that appellants are not entitled to abatement of interest.

HOLDINGS

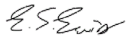
1. Appellants are not entitled to abatement of the late-filing penalty.
2. Appellants are not entitled to abatement of interest.


DISPOSITION

Respondent’s denial of the claim for refund is sustained.

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 Michael F Geary
 Administrative Law Judge

We concur:

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 Elliott Scott Ewing
 Administrative Law Judge

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 John O. Johnson
 Administrative Law Judge

Date Issued: 3/9/2022