

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 21108792
V. BALASANIAN AND)
Z. ROSTOMIAN)
_____)

OPINION

Representing the Parties:

For Appellants: Patrick Russell, Enrolled Agent

For Respondent: Brian C. Miller, Tax Counsel III

For Office of Tax Appeals: Nguyen Dang, Tax Counsel III

K. GAST, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, V. Balasanian and Z. Rostomian (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying their claim for refund of \$4,263 for the 2019 tax year.¹

Appellants elected to have this appeal to be determined by the procedures of the Small Case Program.² Appellants waived their right to an oral hearing; therefore, the matter is being decided based on the written record.

ISSUE

Whether the late-filing penalty and interest should be abated.

¹ This amount appears to be based on a late-filing penalty of \$4,097, plus interest.

² The provisions of the Small Case Program are found under California Code of Regulations, title 18, section 30209.1, effective March 1, 2021.

FACTUAL FINDINGS

1. Appellants hired a tax return preparer (Agent) to electronically file their joint 2019 California income tax return (Return). Agent attempted to electronically file the Return before the July 15, 2020 filing deadline but was unsuccessful.³ Due to staffing shortages caused by the COVID-19 pandemic, Agent was unaware the Return had not been filed.
2. Appellants ultimately filed the Return on February 23, 2021, about seven months past the filing deadline. Because the Return was filed late, FTB imposed, as relevant here, a late-filing penalty and applicable interest. Appellants paid the balance due and filed a refund claim seeking abatement of that penalty and related interest.
3. FTB issued a Notice of Action denying appellants' refund claim and this timely appeal followed.

DISCUSSION

Appellants argue the late-filing penalty and interest should be abated due to reasonable cause. They assert they hired Agent to electronically file the Return, and their Agent's failure to timely file the Return was entirely outside of their control. They contend COVID-19 caused both Agent to experience substantial staffing shortages and the IRS and California electronic filing systems to be inactive and fail to indicate whether the Return had (or had not) been filed. Accordingly, by hiring Agent and performing all the steps required of them, appellants maintain they had done everything reasonably possible to ensure the Return was timely filed.

The late-filing penalty shall not apply if the late filing was due to reasonable cause and not 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, 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.) FTB'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.)

³ Although the statutory filing deadline for individuals is April 15th following the close of the taxable year (R&TC, § 18566), FTB postponed that deadline for the 2019 tax year to July 15, 2020, due to the COVID-19 pandemic. (See R&TC, § 18572.)

It is well established that taxpayers have a personal, non-delegable obligation to file a tax return by the due date, and thus a taxpayer's reliance upon an agent to file a return by that due date is not reasonable cause. (*U.S. v. Boyle* (1985) 469 U.S. 241; *Appeal of Quality Tax & Financial Services, Inc.*, 2018-OTA-130P.) Moreover, the exercise of ordinary business care and prudence required appellants to do more than merely perform and/or delegate the tasks necessary to timely file the Return. It also required appellants to personally verify the Return had been successfully transmitted, and when it has not been, to take appropriate corrective action. (*Ibid.*) The record does not show appellants took such action, but they instead chose to rely solely upon Agent. They must therefore bear the consequences of that decision.

With respect to interest, its imposition is mandatory and accrues regardless of the reason for the deficiency. (R&TC, § 19101(a); *Appeal of Balch*, 2018-OTA-159P.) There is no reasonable cause exception to its imposition. (*Appeal of Moy*, 2019-OTA-057P.) To obtain relief from interest, appellants must instead qualify under one of the waiver provisions: R&TC sections 19104 (pertaining to unreasonable error or delay by FTB in the performance of a ministerial or managerial act); 19112 (pertaining to extreme financial hardship caused by significant disability or other catastrophic circumstance); or 21012 (pertaining to reasonable reliance on the written advice of FTB). (*Ibid.*) Appellants have not alleged, and the record does not reflect, that any of these waiver provisions are applicable here.

Finally, appellants point to their good filing and payment history as a basis for granting relief. However, California does not allow for a "first-time" abatement of penalties or interest. (*Appeal of Porreca*, 2018-OTA-095P.) Appellants' good compliance history, while commendable, is therefore unavailing here.

HOLDING

The late-filing penalty and interest should not be abated.

DISPOSITION

FTB's action is sustained.

DocuSigned by:

Kenneth Gast

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Kenneth Gast

Administrative Law Judge

Date Issued: 3/2/2022