

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
H. GAO

) OTA Case No. 21078142
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OPINION

Representing the Parties:

For Appellant: Howard Li

For Respondent: Christopher Cook, Tax Counsel

E. S. EWING, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, H. Gao (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$3,541, plus applicable interest, for the 2018 tax year.

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

ISSUE

Whether appellant has shown reasonable cause to abate the late filing penalty.¹

FACTUAL FINDINGS

1. On February 11, 2021, appellant filed an untimely California income tax return for the 2018 tax year. At the time of filing the untimely return, appellant made a partial payment of the reported liability, which was also late.

¹ Respondent’s opening brief states that the late payment penalty was imposed; however, a review of the Notice of Tax Return Change - Revised Balance and the Claim for Refund Denied correspondence shows that respondent actually imposed the “delinquent filing” or late filing penalty, not the late payment penalty. Thus, we will analyze whether the late filing penalty should be abated.

2. Respondent sent appellant a Notice of Tax Return Change - Revised Balance (Notice) that reflected, as relevant here, the imposition of a late filing penalty of \$3,541, plus applicable interest. Appellant paid the full amount due as indicated in the Notice.
3. Appellant then filed a claim for refund, requesting abatement of the late filing penalty of \$3,541.² Respondent denied appellant's claim for refund.
4. Appellant filed this timely appeal.

DISCUSSION

Respondent imposes a late filing penalty when a taxpayer does not timely file a return, unless it is shown that the failure to timely file was due to reasonable cause and not due to willful neglect. (R&TC, § 19131(a).) When respondent imposes this penalty, the law presumes that it is correct. (*Appeal of Xie*, 2018-OTA-076P.) A taxpayer has the burden of establishing reasonable cause. (*Appeal of Belcher*, 2021-OTA-284P.) The applicable standard of proof is by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(c).) Here, it is undisputed that appellant did not timely file a return for the 2018 tax year, and that the late filing penalty was properly imposed.

However, appellant makes reasonable cause type statements and implies that there is reasonable cause to abate the late filing penalty. A taxpayer must provide credible and competent evidence supporting a claim of reasonable cause. (*Appeal of Xie, supra.*) 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 Auburn Old Town Gallery, LLC*, 2019-OTA-319P.)

Here, appellant states that appellant received incorrect IRS Schedule K-1s (K-1s) from two Limited Liability Companies (LLCs). Appellant further states that the two LLCs mistakenly indicated an incorrect social security number on the K-1s issued to appellant because another partner in the LLCs had the same last name as appellant. Appellant points out that it took a period of time for the LLCs to issue corrected K-1s, and that the delay in filing appellant's tax return and the accompanying late payment were the result of the errors in the K-1s and the time it

² In appellant's refund claim, appellant also requested abatement of interest but only raised the late filing penalty as an issue in appellant's appeal letter to Office of Tax Appeals. Therefore, we do not address interest abatement further.

took to correct them. However, appellant provides no evidence to support these assertions and does not explain how the problems with the K-1s prevented appellant from timely filing the 2018 tax return. Indeed, appellant fails to provide any evidence to 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 Auburn Old Town Gallery, LLC, supra.*)

Finally, reasonable cause based on insufficient information requires the taxpayer to demonstrate the efforts made to retrieve records from third parties or acquire the information necessary to file an accurate tax return. (*Appeal of Moren, 2019-OTA-176P.*) Appellant has presented no evidence of efforts made to acquire the information necessary to file a tax return. Moreover, appellant has not shown that the failure to file a timely return was due to more than a lack of documentation or difficulty in calculating the tax liability. (See *Appeal of Moren, supra.*) Thus, appellant has not met the burden of showing reasonable cause to abate the late filing penalty. (See *Appeal of Belcher, supra.*)

HOLDING

Appellant has failed to show reasonable cause to abate the late filing penalty.

DISPOSITION

Respondent's action is sustained.

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Elliott Scott Ewing
Administrative Law Judge

We concur:

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Kenneth Gast
Administrative Law Judge

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Keith T. Long
Administrative Law Judge

Date Issued: 4/12/2022