

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 21078125
D. LANTERO AND)
P. LANTERO)
_____)

OPINION

Representing the Parties:

For Appellants: Devon Knoll, Representative

For Respondent: Noel Garcia, Tax Counsel

O. AKOPCHIKYAN, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, D. Lantero and P. Lantero (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$7,892 for the 2019 tax year.¹

Appellants waived the right to an oral hearing; therefore, Office of Tax Appeals (OTA) decides this matter based on the written record.

ISSUES

1. Whether appellants timely filed their 2019 California tax return.
2. If appellants did not timely file their 2019 California tax return, whether appellants have established reasonable cause to abate the late filing penalty for the 2019 tax year.
3. Whether appellants have established a legal basis to abate interest.

¹ On July 16, 2021, Office of Tax Appeals acknowledged the amount in controversy as \$12,649.50, plus interest, which is comprised of a late filing penalty of \$11,219.50 and an underpayment of estimated tax penalty of \$1,430. However, appellants submitted a refund claim in the amount of \$7,892 only. Appellants appear to have calculated this amount as follows: appellants subtracted the penalties they self-assessed on their original 2019 return—a late payment penalty of \$4,361 and an underpayment of estimated tax of \$1,430—from FTB’s assessment of \$12,649.50 and then added interest they paid of approximately \$1,034.58. Accordingly, the amount in controversy is \$7,892, which is the amount requested in appellants’ refund claim.

FACTUAL FINDINGS

1. On November 17, 2020, appellants filed their 2019 California Nonresident or Part-Year Resident Income Tax Return and self-assessed a late *payment* penalty of \$4,361 and an underpayment of estimated tax penalty of \$1,430.
2. On December 8, 2020, FTB issued a notice assessing a late *filing* penalty and an underpayment of estimated tax penalty totaling \$12,649.50, plus interest, resulting in a balance due of \$7,845.73.
3. On December 15, 2020, appellants responded to the FTB notice by letter, stating they timely filed their 2019 tax return because they mailed two requests for extensions to the IRS.
4. On January 27, 2021, FTB notified appellants by letter that FTB denied appellants' request for a waiver of the late filing penalty.
5. Appellants paid the outstanding balance on February 4, 2021, and filed a refund claim on March 10, 2021, contesting the late filing penalty only. FTB denied the refund claim, and this timely appeal followed.

DISCUSSION

Issue 1: Whether appellants timely filed their 2019 California tax return.

A personal income tax return generally is due on or before April 15 following the close of the calendar year. (R&TC, § 18566.) FTB allows an automatic six-month extension if the return is filed within six months of the original due date. (R&TC, § 18567(a)(1); Cal. Code Regs., tit. 18, § 18567(a).) For the 2019 tax year, however, FTB postponed the due date to file and pay taxes to July 15, 2020, because of COVID-19, and allowed an automatic extension of time to October 15, 2020, if the return is filed by that date.²

California provides a special filing date for taxpayers who are “residing or traveling abroad.” (R&TC, § 18567(a)(2)(A); FTB Notice 91-3.) For these taxpayers, California tax returns are due on or before June 15 following the close of the calendar year, and FTB allows an automatic six-month extension if the return is filed by December 15. (FTB Notice 91-3.)

² See *State Postpones Tax Deadlines Until July 15 Due to the COVID-19 Pandemic*, March 18, 2020, available at: <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2020-3-state-postpones-tax-deadlines-until-july-15-due-to-the-covid-19-pandemic.html>; R&TC, § 18572.

Appellants filed their California tax return on November 17, 2020. Appellants contend that they timely filed their 2019 California tax return because their return was due on December 15, 2020. More specifically, appellants contend that: (1) they were outside of the country for federal tax purposes and, as a result, were allowed two additional months to file their federal tax return; and (2) because they satisfied these federal requirements, their California return was due on December 15, 2020, “based on California’s general recognition of Federal deadlines and extensions.” OTA disagrees.

California does not incorporate federal rules for purposes of determining whether a taxpayer is “residing or traveling abroad,” as that phrase is used in R&TC section 18567(a)(2)(A). (See R&TC, §§ 18566, 18567 [California’s statutory filing dates do not reference or otherwise incorporate federal law].) OTA is not aware of any controlling California authority that has defined the phrase “residing or traveling abroad” for purposes of this rule. However, OTA need not decide the meaning of this phrase because OTA finds that appellants have not presented any evidence to show that they were “residing or traveling abroad” on any date in 2020 under any reasonable interpretation of that phrase. Therefore, OTA finds appellants’ return was originally due on July 15, 2020, which, as discussed above, was the postponed due date for filing individual tax returns for the 2019 tax year, and their return would have been timely if filed by the extended due date of October 15, 2020. Appellants filed their 2019 tax return on November 17, 2020, after both the original and extended due dates.

Appellants have the burden of proving that their refund claim is timely and that they are entitled to a refund. (See *Appeal of Estate of Gillespie*, 2018-OTA-052P.) OTA finds that appellants have not met their burden of establishing that they are entitled to a refund.

Issue 2: If appellants did not timely file their 2019 California tax return, whether appellants have established reasonable cause to abate the late filing penalty for the 2019 tax year.

California imposes a penalty for failing to file a return on or before the due date, unless the taxpayer shows that the failure is due to reasonable cause and not willful neglect. (R&TC, § 19131(a).) To establish reasonable cause, the taxpayer must show the failure to timely file a return occurred despite the exercise of “ordinary business care and prudence.” (*Appeal of Friedman*, 2018-OTA-077P.) When FTB imposes a late filing penalty, it is presumed to have been correctly imposed, and the burden of proof is on the taxpayer to show that reasonable cause exists to abate the penalty. (*Appeal of Xie*, 2018-OTA-076P.) To overcome the presumption of

correctness, the taxpayer must provide credible and competent evidence supporting a claim of reasonable cause. (*Ibid.*)

Appellants contend that the late filing penalty should be abated because they needed additional time to file their federal and California tax returns. More specifically, in their request for appeal, appellants contend they were “waiting for the investment documents/revised investment documents (K-1’s) which was only furnished by the entity in September 2020.” However, difficulty in obtaining information generally does not constitute reasonable cause for the late filing of a return. (*Appeal of Xie, supra.*) Taxpayers generally have an obligation to file timely returns with the best available information, and to subsequently file an amended return, if necessary. (*Ibid.*) Appellants have not presented any evidence showing what steps they took to gather the information they claim they needed to file their return before the statutory due date, or why they could not file a timely return and amend it after receiving the investment documents. Therefore, appellants have not met their burden of establishing reasonable cause.

Additionally, although appellants may have had a sincere belief that their California tax return was due on December 15, 2020, that belief alone does not constitute reasonable cause for the failure to file a timely return. Ignorance of the law is not reasonable cause for the failure to comply with statutory requirements. (*Appeal of Cremel and Koeppel, 2021-OTA-222P.*) Accordingly, appellants have not met their burden of establishing that the late filing penalty should be abated for reasonable cause.

Issue 3: Whether appellants have established a legal basis to abate interest.

If any amount of the tax is not paid by the due date, interest is required to be imposed from the due date until the date the taxes are paid. (R&TC, § 19101(a).) Interest is not a penalty but is compensation for the taxpayer’s use of money which should have been paid to the state. (*Appeal of Balch, 2018-OTA-159P.*) Imposition of interest is mandatory, and it can only be abated in certain limited situations when authorized by law. (R&TC, § 19101(a); *Appeal of Balch, supra.*) There is no reasonable cause exception to the imposition of interest. (*Appeal of Summit Hosting LLC, 2021-OTA-216P.*) To obtain relief from interest, appellants must qualify under R&TC section 19104, 19112, or 21012; however, appellants have not presented any argument or evidence supporting the position that one of these statutory provisions apply. Thus, appellants have not established any basis for interest abatement for the 2019 tax year.

HOLDINGS

1. Appellants did not timely file their 2019 California tax return.
2. Appellants have not established reasonable cause to abate the late filing penalty for the 2019 tax year.
3. Appellants have not established a legal basis to abate interest.

DISPOSITION

FTB’s denial of appellants’ claim for refund for the 2019 tax year is sustained.

DocuSigned by:

Ovsep Akopchikyan

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Ovsep Akopchikyan
Administrative Law Judge

We concur:

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Huy "Mike" Le
Administrative Law Judge

DocuSigned by:

Daniel Cho

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Daniel K. Cho
Administrative Law Judge

Date Issued: 5/23/2022