

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 21078200
P. BINNS)
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OPINION

Representing the Parties:

For Appellant: LaQuanna McDowell, E.A.

For Respondent: Bradley J. Coutinho, Tax Counsel III

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324 P. Binns (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claims for refund of: a late-filing penalty of \$15,173 for taxable year 2013; a late-filing penalty of \$1,213.50 and a demand penalty of \$2,849.75 for taxable year 2014; a late-payment penalty of \$349.75 for taxable year 2015; a late-filing penalty of \$2,657 for taxable year 2017; and, a late-filing penalty of \$455 for taxable year 2018.

Office of Tax Appeals (OTA) Administrative Law Judges Teresa A. Stanley, Natasha Ralston, and Tommy Leung held an electronic oral hearing for this matter on January 26, 2022. The record was closed on March 14, 2022, and this matter was submitted for an opinion.

ISSUES¹

1. Has appellant established reasonable cause to abate late-filing penalties imposed for taxable years 2013, 2014, 2017, and 2018?
2. Has appellant established reasonable cause to abate the demand penalty imposed for taxable year 2014?

¹ Appellant made no arguments specific to waiver of interest. Appellant appeals only the interest associated with the penalties. Thus, interest will not be separately addressed.

3. Has appellant established reasonable cause to abate the late-payment penalty imposed for taxable year 2015?

FACTUAL FINDINGS

2013 Taxable Year

1. FTB sent to appellant a Request for Tax Return for taxable year 2013, on March 3, 2015. When appellant did not respond, FTB issued a Notice of Proposed Assessment (NPA) on May 4, 2015.
2. Appellant filed a 2013 California Resident Income Tax Return (California return) late, on October 7, 2016. FTB imposed a late-filing penalty of \$15,713.
3. The IRS abated penalties initially assessed against appellant as part of its First-Time Abate administrative program.
4. After appellant paid the outstanding liability, she filed a claim for refund of the penalties.

2014 Taxable Year

5. FTB sent to appellant a Demand for Tax Return for taxable year 2014, on February 2, 2016. When appellant did not respond, FTB issued an NPA on April 4, 2016.
6. Appellant filed a 2014 California return late, on October 6, 2016. FTB imposed a late-filing penalty of \$1,231.50 and a demand penalty of \$2,849.75.
7. After appellant paid the outstanding liability, she filed a claim for refund of the penalties.

2015 Taxable Year

8. Appellant filed a timely 2015 California return on October 6, 2016, but did not pay the outstanding tax liability until July 15, 2020.
9. FTB imposed a late-payment penalty of \$349.75.
10. After appellant paid the outstanding liability, she filed a claim for refund of the penalty.

2017 Taxable Year

11. FTB sent to appellant a Demand for Tax Return on April 24, 2019. FTB issued an NPA on July 12, 2019, claiming they had not received a tax return from appellant.
12. Appellant filed a 2017 California return late, on July 2, 2019.

13. FTB imposed a late-filing penalty of \$2,657 and did not impose a demand penalty.
14. After appellant paid the outstanding liability, she filed a claim for refund of the penalty.

2018 Taxable Year

15. Appellant filed a California return late, on December 9, 2019.
16. FTB imposed a late-filing penalty of \$455.
17. After appellant paid the outstanding liability, she filed a claim for refund of the penalty.

Appeal to the Office of Tax Appeals

18. FTB denied each of appellant's claims for refund of penalties, and this timely appeal followed.

DISCUSSION

Issue 1: Has appellant established reasonable cause to abate late-filing penalties for taxable years 2013, 2014, 2017, and 2018?

FTB 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.² (R&TC, § 19131(a).) When FTB 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 exists for the late filing. (*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); *Appeal of Belcher, supra*.) To meet this evidentiary standard, a party must establish by documentation or other evidence that the circumstances he or she asserts are more likely than not to be correct. (*Appeal of Belcher, supra*.) Taxpayers must provide credible and competent evidence to support the claim of reasonable cause; otherwise, the penalty will not be abated. (*Ibid.*)

Each taxpayer has a non-delegable obligation to file a tax return by the due date. (See *U.S. v. Boyle* (1985) 469 U.S. 241 (*Boyle*).) In *Boyle*, the United States Supreme Court held that “It requires no special training or effort to ascertain a deadline and make sure that it is met. The failure to make a timely filing of a tax return is not excused by the taxpayer’s reliance on an agent, and such reliance is not ‘reasonable cause’ for a late filing” (*Boyle, supra*, at p. 252.)

² Willful neglect means a conscious, intentional failure or reckless indifference. (*U.S. v. Boyle* (1985) 469 U.S. 241, 245.) FTB has not alleged, and there is no evidence in the record, that appellant acted with willful neglect.

Appellant does not dispute that her tax returns were filed late. Appellant asserts that she had reasonable cause for the late filings for the taxable years at issue. Appellant’s mother passed away in 2013 and left her an unexpected annuity which was taxable to her. Appellant did not have sufficient funds to pay the tax liability at the time. Appellant then hired a Colorado company in 2015 to assist her with filing tax returns for 2011 through 2015. Appellant believed “everything was taken care of,” but appellant learned that her returns had not been filed when FTB levied her bank account. Moreover, appellant was notified that she had identity theft issues that were not explained to her by the Colorado tax preparation company. Appellant contends that these difficulties caused her tax issues to “snowball.” Appellant also contends that she has “always been diligent with filing and paying her taxes,” and noted that the IRS had abated penalties for 2013.

Based on the bright line rule in *Boyle*, appellant may not establish reasonable cause based on her reliance on a company in Colorado to file her tax returns. It is appellant’s obligation to ensure that returns are filed on time. Moreover, appellant admits that she did not even contact that company until well after the deadline for filing the 2013 tax return, and appellant did not explain what steps she took, if any, to ensure that the company she retained actually filed the tax returns. Appellant must have known she had not been asked to review any tax returns. Lastly, although appellant hired a new tax professional in 2016, she still did not file timely returns for 2017 or 2018.

Appellant’s assertion that the inheritance upon her mother’s passing caused unexpected tax payable by appellant, also does not establish reasonable cause for filing 2013, 2014, 2017, and 2018 tax returns late. Appellant claims that things “snowballed” out of control, that she could not afford to pay the liability, and that she assumed things had been taken care of by the Colorado company, do not show that appellant acted as a reasonably prudent person would have acted under similar circumstances. Unexpected income would not stop a prudent person from filing a return. Nor would inability to pay the tax liability stop a prudent person from filing the return and figuring out how to pay the liability, as discussed below. Moreover, a reasonably prudent person would have followed up with a tax preparer in a timely fashion to ensure that tax returns were prepared and filed. None of appellant’s asserted reasons with regard to the unexpected taxable income in 2013 explain why she filed tax returns for subsequent taxable years late, even after she hired a competent tax professional.

Appellant further alleged that the IRS had abated penalties for taxable year 2013. The OTA left the record open for appellant to provide evidence of that, which was submitted. FTB responded that the code used by the IRS showed that the abatement was made under an administrative program that the IRS calls First-Time Abate, wherein a taxpayer with a three-year history of compliance with filing and payment requirements may qualify for abatement of penalties on a first-time basis.

The record reflects that the IRS did abate appellant's penalties for taxable year 2013 only. Nothing in the documentation submitted post-hearing shows that the IRS abated any of appellant's penalties based on reasonable cause. Neither the California Legislature nor FTB has adopted a comparable penalty abatement program.³ Based on the foregoing, appellant has not established reasonable cause sufficient to abate the late-filing penalties.

Issue 2: Has appellant established reasonable cause to abate the demand penalty imposed for taxable year 2014?

R&TC section 19133 imposes a penalty when a taxpayer fails to file a return or provide information upon FTB's notice and demand unless the failure is due to reasonable cause and not willful neglect. FTB imposes a demand penalty if: (1) the taxpayer fails to respond to a current demand and (2) at any time during the preceding four tax years, FTB issued an NPA following the taxpayer's failure to timely respond to a Request for Tax Return or a Demand for Tax Return. (Cal. Code Regs., tit. 18, § 19133(b).)

FTB sent to appellant a Request for Tax Return for taxable year 2013 on March 5, 2015. When appellant did not respond to the request, FTB issued an NPA on May 4, 2015. For taxable year 2014, FTB sent to appellant a Demand for Tax Return on February 2, 2016, to which appellant failed to respond. FTB issued an NPA for 2014 on April 4, 2016. Because appellant had failed to respond to the 2013 request, and FTB followed up with issuance of an NPA, the penalty was properly imposed when appellant again failed to respond to a Demand for Tax Return a year later. (See *Appeal of Jones*, 2021-OTA-144P.)

Appellant made reasonable cause arguments similar to those she made for the late-filing penalty. However, none of the appellant's arguments show why she was unable to respond or

³ The California Legislature has considered and declined to adopt bills that would change California law to allow a first-time abatement of timeliness-related penalties for taxpayers based solely on their history of timely filing and payment. (See Assem. Bill No. 1777 (2013-2014 Reg. Sess.))

file a tax return when FTB demanded in February 2016. The above discussion is incorporated here, and OTA concludes that appellant has not established reasonable cause to abate the demand penalty.

Issue 3: Has appellant established reasonable cause to abate the late-payment penalty imposed for taxable year 2015?

R&TC section 19001 provides that the personal income tax “shall be paid at the time and place fixed for filing the return (determined without regard to any extension of time for filing the return).” A late-payment penalty shall be imposed when a taxpayer fails to pay the amount shown as due on the return on or before the due date of the return. (R&TC, § 19132.)

The late-payment penalty may be abated if a taxpayer shows that the failure to make a timely payment of tax was due to reasonable cause and not due to willful neglect. (R&TC, § 19132(a).) To establish reasonable cause for a late payment of tax, a taxpayer must show that his or her failure to make a timely payment of the proper amount of tax occurred despite the exercise of ordinary business care and prudence. (*Appeal of Scanlon*, 2018-OTA-075P.)

Here it is undisputed that appellant failed to timely pay tax, and therefore the penalty was properly imposed. Appellant must, therefore, establish that she acted as a reasonably prudent person in paying her 2015 tax liability late.


Appellant did not directly address why she did not pay her 2015 tax liability on time. Appellant’s 2015 tax would have been due by April 15, 2016, by which time appellant must have known that she had outstanding tax liabilities for prior years. Appellant’s NPA for taxable year 2013, issued on May 4, 2015, advised appellant that she had an outstanding liability, and that if she could not pay that liability, appellant could work with FTB to establish an installment agreement. Appellant did establish an installment agreement for which FTB charged a \$34 fee on October 15, 2016. Thus, OTA can assume appellant knew how to do so for the 2015 tax liability but did not do so until late 2016. Furthermore, the reasonable cause arguments made by appellant, as discussed above, do not show why appellant did not make a timely payment for taxable year 2015. Based on the foregoing, appellant has not established reasonable cause to abate the late-payment penalty.

HOLDINGS

1. Appellant has not established reasonable cause to abate late-filing penalties imposed for taxable years 2013, 2014, 2017, and 2018.
2. Appellant has not established reasonable cause to abate the demand penalty imposed for taxable year 2014.
3. Appellant has not established reasonable cause to abate the late-payment penalty imposed for taxable year 2015.


DISPOSITION

FTB’s actions are sustained.


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 Teresa A. Stanley
 Administrative Law Judge

We concur:

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 Natasha Ralston
 Administrative Law Judge

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 Tommy Leung
 Administrative Law Judge

Date Issued: 5/17/2022