

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 22039847
)
P. BALAKHANE AND)
D. BENJAMAN)
 _____)

OPINION

Representing the Parties:

For Appellants: P. Balakhane and
D. Benjaman

For Respondent: AnaMarija Antic-Jezildzic, Specialist

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) 19324, P. Balakhane and D. Benjaman (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants' claim for refund of \$574.22 for the 2019 taxable year.

Appellants elected to have this appeal determined pursuant to the procedures of the Small Case Program. Those procedures require the assignment of a single administrative law judge. (Cal. Code Regs., tit. 18, § 30209.1.) Appellants waived the right to an oral hearing; therefore, the Office of Tax Appeals (OTA) decides the matter based on the written record.

ISSUE

Have appellants established reasonable cause to abate the late-filing penalty?¹

FACTUAL FINDINGS

1. Appellants filed their 2019 California Resident Income Tax Return on October 6, 2021.
2. FTB applied a late-filing penalty of \$461.25, plus interest.
3. FTB took collection actions, and appellants' 2019 tax liability was paid in full by March 1, 2022.

¹Appellants requested abatement of a late-filing penalty plus interest but made no specific arguments with respect to interest. Thus, interest will only be addressed as it relates to the underlying penalty.

4. Appellants filed a claim for refund of the late-filing penalty and interest based on reasonable cause.
5. FTB denied appellants' claim for refund, and this timely appeal followed.

DISCUSSION

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 due to willful neglect. (R&TC, § 19131.) The late-filing penalty is calculated at 5 percent of the tax due for each month or fraction of each month the return is late, with a maximum penalty of 25 percent of the tax due. (R&TC, § 19131(a).)

When FTB imposes a penalty, it is presumed to have been imposed correctly. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509; *Appeal of Xie*, 2018-OTA-076P.) A taxpayer may rebut this presumption by providing credible and competent evidence supporting abatement of the penalty for reasonable cause. (*Appeal of Xie, supra.*)

To establish reasonable cause, the taxpayer must show that the failure to file a timely return occurred despite the exercise of ordinary business care and prudence, or that such cause existed as would prompt an ordinarily prudent businessperson to have acted under similar circumstances. (*Appeal of Head and Feliciano*, 2020-OTA-127P.) The U.S. Supreme Court has held that “reasonable cause” is established when a taxpayer shows reasonable reliance on the advice of an accountant or attorney that it was unnecessary to file a return, even when such advice turned out to have been mistaken. (*United States v. Boyle* (1985) 469 U.S. 241, 250 (*Boyle*)). California follows *Boyle* in that a taxpayer’s reliance on a tax adviser must involve reliance on substantive tax advice and not on simple clerical duties. (*Appeal of Mauritzen*, 2021-OTA-198P.)

There is no dispute that appellants filed their return more than a year after the postponed due date of July 15, 2020,² and there is no dispute as to the calculation of the penalty. Appellants contend that they had reasonable cause for filing their return late because their accountant was suffering from the COVID-19 pandemic.

² See FTB news release: <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>.

FTB contends that appellants may not rely on a tax advisor or accountant to meet a filing deadline. Instead, FTB asserts that appellants may only rely on an advisor in situations where substantive advice was given.


Appellants do not assert that they were given any substantive tax advice by their accountant, such as whether or not they had a filing requirement for taxable year 2019. Regarding tax filing deadlines, the U.S. Supreme Court established a bright-line rule that a taxpayer's reliance on an agent, such as an accountant, to file a return by the due date is not reasonable cause. (*Appeal of Quality Tax & Financial Services, Inc.*, 2018-OTA-130P.) Thus, appellants have not established they acted as reasonably prudent businesspersons by relying on their accountant to file on time.³

HOLDING

Appellants failed to establish reasonable cause for filing their return late and are not entitled to abatement of the late-filing penalty.

DISPOSITION

FTB's action denying appellants' claim for refund is sustained.

DocuSigned by:

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Teresa A. Stanley
Administrative Law Judge

Date Issued: 7/14/2022

³ Even if OTA were to consider appellants' argument that their accountant was affected by the COVID-19 pandemic, nothing in OTA's record shows how one person's illness caused a delay of more than 15 months. Moreover, appellants have not explained why they were unable to engage another accountant to prepare their return timely if their existing accountant was ill for an extended period.