

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:

J. HOSKINS AND
A. HOSKINS

) OTA Case No. 21057743
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OPINION

Representing the Parties:

For Appellants:

Dan Vincent, EA
Richard Gurriere, EA

For Respondent:

Josh Ricafort, Tax Counsel
Ellen Swain, Tax Counsel IV

For Office of Tax Appeals:

Craig Okihara, Business Tax Specialist III

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. Hoskins and A. Hoskins (appellants) appeal an action by Franchise Tax Board (respondent) denying appellants’ claim for refund of \$3,742.50 for the 2018 taxable year.

Office of Tax Appeals Administrative Law Judges Andrea L.H. Long, Sheriene Anne Ridenour, and Tommy Leung held an electronic hearing for this matter on July 19, 2022.¹ At the conclusion of the hearing, the record was closed, and this matter was submitted for an opinion.

ISSUE

Whether appellants have established reasonable cause for failing to timely file their 2018 California personal income tax return (Form 540).

¹ Although noticed for Sacramento, California, this hearing was conducted electronically per appellants’ request.

FACTUAL FINDINGS

1. Appellants filed their 2018 Form 540 on March 19, 2020.
2. Appellants' 2018 Form 540 was due on April 15, 2019. The IRS and respondent granted an extended due date of April 30, 2019, for 2018 federal and state returns to those impacted by the Camp Fire.² Appellants filed their 2018 return after the expiration of this extended due date.
3. Respondent imposed a late filing penalty of \$3,742.50 for the 2018 taxable year because appellants filed their return after the due date.
4. Appellants subsequently paid all the amounts due and filed a timely claim for refund of the late filing penalty.
5. On March 22, 2021, respondent denied the claim for refund.

DISCUSSION

A late filing penalty shall be imposed when a taxpayer fails to file a tax return by either the due date or the extended due date, unless the taxpayer establishes that the late filing was due to reasonable cause and not due to willful neglect. (R&TC, § 19131(a).) The late filing penalty is calculated at 5 percent of the tax, for each month or a fraction thereof, that the return is late, with a maximum penalty of 25 percent of the tax. (*Ibid.*) When respondent imposes a penalty, the law presumes that the penalty was imposed correctly. (*Appeal of Xie*, 2018-OTA-076P.) The taxpayer bears the burden of proving that reasonable cause exists to support an abatement of the penalty. (*Ibid.*; *Appeal of Triple Crown Baseball LLC*, 2019-OTA-025P.) To establish reasonable cause, the taxpayer must show that the failure to file timely returns occurred despite the exercise of ordinary business care and prudence, or that such cause existed as would prompt an ordinarily intelligent and prudent businessperson to have so acted under similar circumstances. (*Appeal of Head and Feliciano*, 2020-OTA-127P.) Unsupported assertions are insufficient to satisfy the taxpayer's burden. (*Ibid.*)

² In a February 2019 Tax News update, "Victims of disasters receive more time to file and pay," respondent stated that: "The **affected taxpayers** impacted by the Northern and Southern California wildfires in 2018 are granted an extension to file 2018 California tax returns and make payments until April 30, 2019." (Franchise Tax Board, *February 2019 Tax News* (Feb. 2019) <https://www.ftb.ca.gov/about-ftb/newsroom/tax-news/february-2019/print-version.pdf>, boldface in original.) The extension was granted to affected taxpayers of Butte, Los Angeles, and Ventura counties.

Here, it is undisputed that appellants filed their 2018 tax return on March 19, 2020, nearly 11 months after the extended due date of April 30, 2019, for taxpayers impacted by the 2018 wildfires and approximately five months after the deadline for an automatic six-month extension of October 15, 2019. Appellants also do not dispute the calculation of the penalty.

Initially, appellants asserted that both they and their accountant lost their respective homes and businesses, as well as appellants' financial documents, in the Camp Fire. Appellants asserted that the IRS abated all penalties because the fire was declared a national disaster. Appellants also contend that this was the first time they were late in filing and should be considered for an abatement as a first-time late filer.

In subsequent communications and during the hearing, appellants corrected their account of the circumstances for their late filing of their 2018 Form 540. At the hearing, appellant-wife testified that their accountant for 15 years retired in 2018, so they retained the services of another tax preparer (who was highly recommended) in February 2019. Appellants state that they provided him with everything he needed to prepare the return. Appellants assert that in April 2019, the tax preparer informed them that he filed an extension to file until October (which they believe he did not) and in October 2019, he informed them that everything was fine. Appellant-wife testified that she repeatedly followed-up with the tax preparer about the status of their 2018 Form 540. Appellants assert that they were unable to get a hold of the tax preparer for another four months after their October 2019 discussion and in March 2020, after telling the tax preparer that they wanted their records back so they could find another accountant, finally got their 2018 Form 540 completed and filed. Appellants now contend that their 2018 Form 540 was filed late due to the deceitful behavior of their tax preparer.

Respondent notes that appellants' federal transcript shows that the IRS imposed a federal late filing penalty and abated it for the 2018 taxable year. However, appellants have not provided evidence that the IRS abated its penalty for reasonable cause. The IRS does administer a program called "First Time Abate" through which the IRS abates first-time timeliness penalties if a taxpayer has timely filed returns and paid taxes due for the preceding three years; California had no such program until the 2022 taxable year (see R&TC, § 19132.5); thus, as previously stated, California law for 2018 allows abatement only on a showing that the failure to file timely was due to reasonable cause and not due to willful neglect. Hence, the only question before this

panel is whether appellants had reasonable cause for the late filing of their return so that the penalty may be abated.

Against this background, it is noted that both the federal and California taxing authorities determined in February 2019 that the appropriate amount of extra time to allow those affected by the Camp Fire to file their 2018 tax returns was 15 days – i.e., an extended due date of April 30, 2019. However, appellants' 2018 Form 540 was filed past the April 30, 2019 extended due date, and five months after California's automatic extended due date of October 15, 2019. Moreover, as appellant-wife testified, appellants had the money to pay their 2018 taxes on time and, if they had done so, the penalties imposed by respondent in this appeal would have been less. As tragic as it is under these circumstances, the law (and, indeed, the government's policy of granting a 15-day extension to file) mitigates against a finding that appellants' claimed reliance on their tax preparer to file their 2018 Form 540 satisfies the reasonable cause standard. As the U.S. Supreme Court ruled, every taxpayer has a personal, nondelegable duty to timely file a tax return. (*U.S. v. Boyle* (1985) 469 U.S. 241, 252.) In other words, this non-delegable duty required appellants to personally ensure the timely filing of their 2018 Form 540 by the applicable due date. Accordingly, appellants failed to establish reasonable cause to abate the late filing penalty.

HOLDING

Appellants have not established reasonable cause for failing to timely file their 2018 Form 540.

DISPOSITION

Respondent’s action denying appellants’ refund claim is sustained.

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Tommy Leung
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Tommy Leung
Administrative Law Judge

We concur:

DocuSigned by:
Andrea L.H. Long
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Andrea L.H. Long
Administrative Law Judge

DocuSigned by:
Sheriene Anne Ridenour
67E043D83EF547C...
Sheriene Anne Ridenour
Administrative Law Judge

Date Issued: 9/6/2022