

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 20086509
M. HARMON AND)
C. HARMON)
_____)

OPINION

Representing the Parties:

For Appellants: M. Harmon and C. Harmon

For Respondent: Christopher M. Cook, Tax Counsel III

A. VASSIGH, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. Harmon and C. Harmon (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$1,559.50¹ for the 2018 tax year.

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

ISSUE

Whether appellants have established reasonable cause to abate the late filing penalty.

FACTUAL FINDINGS

1. Appellants hired the services of their long-time CPA to file their 2018 federal and California tax returns, and submitted their tax documents to her in January of 2019.
2. In August 2019, their CPA informed appellants that their 2018 California return was complete, and appellants reviewed the return.

¹ FTB also imposed an estimated tax penalty for the 2018 tax year, such that the original amount at issue was \$1,658.50. During a conference held for this appeal, appellants conceded that there is a legal basis for the imposition of the estimated tax penalty, so that penalty is no longer at issue in this appeal.

3. In September 2019, appellants' CPA informed them that the 2018 California return was ready to be electronically filed (e-filed), and communicated to appellants that the return had been submitted.
4. On September 30, 2019, appellants paid the tax due amount reported on their return.
5. When appellants had not received a statement from FTB imposing a late payment penalty as they had expected, they contacted their CPA on January 28, 2020. Their CPA informed them that "there had been a failure in the e-file system" and that their return had been rejected because an employer identification number on the IRS Form W-2 was "inadvertently overridden with symbols." The CPA indicated that she was dealing with a series of losses in the family and did not see the e-file rejection.
6. Appellants filed their 2018 California tax return on January 29, 2020.²
7. FTB issued a Notice of Tax Return Change – Revised Balance on May 21, 2020, and assessed, as relevant here, a late filing penalty.
8. Appellants subsequently paid the balance due for the 2018 tax year, including the tax, penalties, and interest. Appellants filed a claim for refund, which FTB denied. Appellants then timely filed this appeal.

DISCUSSION

California imposes a penalty for the failure to file a return on or before the due date, unless it is shown that the failure is due to reasonable cause and not due to willful neglect. (R&TC, § 19131.) When FTB imposes a penalty, the law presumes that the penalty was imposed correctly, and the burden of proof is on the taxpayer to establish otherwise. (*Appeal of Xie*, 2018-OTA-076P.) To overcome the presumption of correctness attached to the penalty, a taxpayer must provide credible and competent evidence supporting a claim of reasonable cause; otherwise, the penalty cannot be abated. (*Ibid.*) 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 GEF Operating, Inc.*, 2020-OTA-057P.)

² The date of receipt is redacted on the return provided by FTB, but according to FTB's brief, FTB received the return on January 29, 2020.

It is well established that each taxpayer has a personal, non-delegable obligation to ensure the timely filing of a tax return, and thus, reliance on an agent to perform this act does not constitute reasonable cause to abate a late filing penalty. (*U.S. v. Boyle* (1985) 469 U.S. 241, 251-252 (*Boyle*); *Appeal of Quality Tax & Financial Services, Inc.*, 2018-OTA-130P.) In *Boyle*, the executor of an estate relied upon an attorney to timely file an estate tax return. However, due to a clerical error, the attorney did not timely file the return. The U.S. Supreme Court held that:

The time has come for a rule with as “bright” a line as can be drawn consistent with the statute and implementing regulations. Deadlines are inherently arbitrary; fixed dates, however, are often essential to accomplish necessary results. The Government has millions of taxpayers to monitor, and our system of self-assessment in the initial calculation of a tax simply cannot work on any basis other than one of strict filing standards. Any less rigid standard would risk encouraging a lax attitude toward filing datesCongress has placed the burden of prompt filing on the executor, not on some agent or employee of the executor. The duty is fixed and clear; Congress intended to place upon the taxpayer an obligation to ascertain the statutory deadline and then to meet that deadline, except in a very narrow range of situations. (*Id.* at pp. 248-250.)

The law is clear: the fact that a tax preparer was expected to attend to a matter does not relieve a taxpayer of the duty to comply with the statute, and an agent’s failure to file a tax return cannot constitute reasonable cause for the taxpayer. (*Boyle, supra*, 469 U.S. at p. 252; *Henry v. U.S.*, (N.D. Fla. 1999) 73 F.Supp.2d 1303; *McMahan v. Commissioner* (1997) 114 F.3d 366; *Denenburg v. United States*, (5th Cir. 1991) 920 F.2d 301; *Estate of Fleming v. Commissioner* (7th Cir. 1992) 974 F.2d 894.) The Office of Tax Appeals (OTA) has consistently applied the above rule, set forth in *Boyle* and supported in subsequent caselaw, to income tax returns required to be filed with FTB. (See, e.g., *Appeal of Quality Tax & Financial Services, Inc.*, *supra*; *Appeal of Auburn Old Town Gallery, LLC*, 2019-OTA-319P; *Appeal of Summit Hosting LLC*, 2021-OTA-216P.)

Appellants argue that the late filing penalty should be abated because they hired a CPA to prepare and e-file their 2018 returns, and they paid their 2018 tax liability before the automatic extension date (which was after the payment due date). However, the law is clear that reliance upon the advice of a tax professional can only constitute reasonable cause under certain circumstances where the advice concerns a matter of substantive law. (*Estate of La Meres v. Commissioner* (1992) 98 T.C. 294.) In this case, appellants did not rely upon their CPA on a matter of substantive law. As explained above, the fact that appellants relied on their tax

preparer to file their return does not relieve them of their responsibility to ensure that it is timely filed.

Longstanding precedent on this issue compels OTA to conclude that appellants have not established reasonable cause for the late filing of their 2018 California return. Their tax preparer's failure to verify whether the return was filed does not constitute reasonable cause for appellants' late filing of their return. Moreover, the exercise of ordinary business care and prudence required appellants to do more than merely perform and/or delegate the tasks necessary to timely file the return. It also required appellants to personally verify the return had been successfully transmitted, and when it had not been, to take appropriate corrective action.³ (*Appeal of Quality Tax & Financial Services, Inc., supra.*) The record does not show appellants took such action, but they instead chose to rely solely upon their tax preparer. Here, although appellants followed up with their CPA in January 2020, the return was filed late due to appellants' reliance on the representations of their CPA that the return had been filed. Appellants' actions do not establish reasonable cause for late filing of the California tax return.

For the reasons explained above, OTA finds that appellants have not shown that there is reasonable cause to abate the penalty.

³ OTA explained in its precedential Opinion in *Appeal of Quality Tax & Financial Services, Inc., supra*, that “[i]n the absence of an acknowledgment that a return was transmitted, received, or accepted, an ordinarily intelligent and prudent businessperson would have viewed the E-File History and acknowledgment records to confirm whether the return had been timely transmitted, received by [the tax preparation software], and accepted [by FTB]. Moreover, an ordinarily intelligent and prudent businessperson, after viewing the E-File History and acknowledgment records, and noticing that the return had not been accepted, would have made other attempts to file prior to the end of the extension period.”

HOLDING

Appellants have not demonstrated reasonable cause to abate the late filing penalty.

DISPOSITION

FTB’s action denying the claim for refund is sustained.

DocuSigned by:
Amanda Vassigh
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Amanda Vassigh
Administrative Law Judge

We concur:

DocuSigned by:
Sheriene Anne Ridenour
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Sheriene Anne Ridenour
Administrative Law Judge

DocuSigned by:
Suzanne B. Brown
47F45ABE89E34D0...
Suzanne B. Brown
Administrative Law Judge

Date Issued: 11/15/2022