

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 22039952
M. LAMORE AND)
S. LAMORE)
_____)

OPINION

Representing the Parties:

For Appellants: M. Lamore

For Respondent: Camille Dixon, Tax Counsel

E. LAM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. Lamore (appellant-husband) and S. Lamore (appellant-wife) (collectively appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of a late filing penalty of \$9,632.50 and applicable interest for the 2019 tax year.

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

ISSUES¹

1. Whether appellants have established reasonable cause for failing to timely file their 2019 tax return.
2. Whether appellants are entitled to interest abatement.

FACTUAL FINDINGS

1. On June 30, 2021, FTB issued to appellant-husband a Request for Tax Return based on third-party payor information that he received California source income from Deep Six Enterprises, Inc. for the 2019 tax year. In response, appellants untimely filed their joint

¹ On appeal, appellants state that they are “only asking for abatement of interest,” yet also state that the dollar amount of the appeal is \$9,632.50, which is the amount of the late filing penalty. Therefore, out of caution, OTA will address both issues.

- 2019 California Nonresident or Part-Year Resident Income Tax Return (Form 540NR) on July 15, 2021.
2. After FTB processed appellants' 2019 tax return, it issued a Notice of Tax Return Change – Revised Balance (Notice), imposing a late filing penalty of \$9,632.50 and applicable interest of \$1,963.86.
 3. Appellants made the payment to satisfy the amount due in the Notice and filed a claim for refund requesting abatement of the late filing penalty based on reasonable cause and abatement of interest.
 4. FTB denied the claim for refund.
 5. Appellants filed this timely appeal.

DISCUSSION

Issue 1: Whether appellants have established reasonable cause for failing to timely file their 2019 tax return.

R&TC section 19131 imposes a late filing penalty on taxpayers who fail to file a return by either the due date or the extended due date, unless it is shown that the failure was due to reasonable cause and not willful neglect. Generally, to establish reasonable cause, taxpayers 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 intelligent and prudent businessperson to have so acted under similar circumstances. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.) The taxpayers bear the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Appeal of Xie*, 2018-OTA-076P).

Reasonable cause may exist when taxpayers reasonably rely on a tax professional for substantive tax advice as to whether a tax liability exists and the following conditions are met: (1) the person relied on by the taxpayer is a tax professional with competency in the subject of tax law; and (2) the tax professional's advice is based on the taxpayer's full disclosure of the relevant facts and documents. (*Appeal of Summit Hosting LLC*, 2021-OTA-216P, citing *U.S. v. Boyle* (1985) 469 U.S. 241.) Taxpayers must provide credible and competent evidence supporting a claim of reasonable cause; otherwise, the penalty cannot be abated. (*Appeal of Xie, supra.*)

Appellants do not contest whether the late filing penalty was properly imposed or computed. Rather, appellants assert that reasonable cause exists to abate the late filing penalty. Appellants contend that they have established reasonable cause because they relied on their CPA firm, which provided them with the erroneous advice that Barrier1 Systems, Inc., a company that appellants owned, did not have nexus in California for the 2019 tax year. As a result, appellants did not receive a California Schedule K-1 from their company. Appellants further explain that the CPA caught the mistake and immediately corrected it.

Here, a review of the record does not show any facts or circumstances that would warrant a finding of reasonable cause for appellants. As previously discussed above, in order to show that appellants have reasonable cause for their late filing based on the advice of a CPA, appellants must establish that: (1) the CPA that they relied on is a tax professional with competency in the subject of tax law; and (2) the CPA's advice is based on their full disclosure of the relevant facts and documents. First, appellants have not provided any evidence to show that their CPA had competency in California tax law, as appellants' CPA firm is based in North Carolina. (See *Appeal of Summit Hosting, LLC, supra.*) Second, the evidence in the record does not show that appellants received any advice from their CPA or that any research was conducted by the CPA on whether Barrier1 Systems, Inc. had nexus in California. Appellants do not provide any explanation or analysis as to why Barrier1 Systems, Inc. was thought to initially have no nexus in California.²

Moreover, it appears from the record that appellants merely assert that their CPA made a mistake. However, it is well-settled law that appellants' reliance on a tax preparer or an agent to timely file their taxes does not constitute reasonable cause because appellants have a personal, non-delegable obligation to file their taxes by the due date. (*U.S. v. Boyle, supra.*) As such, appellants have not met the burden to establish reasonable cause to abate the late filing penalty.

Issue 2: Whether appellants are entitled to interest abatement.

R&TC section 19101 provides that taxes are due and payable as of the original due date of the taxpayer's return (without regard to extension). If tax is not paid by the original due date or if FTB assesses additional tax and that assessment becomes due and payable, the taxpayer is

² The record also indicates that appellant-husband received California source income from Deep Six Enterprises, Inc. for the 2019 tax year. However, appellants do not explain why the California source income from Deep Six Enterprises, Inc. would not have put them on notice that they had a 2019 California personal income tax filing obligation, wholly apart from Barrier1 Systems, Inc.'s nexus in this state.


charged interest on the resulting balance due, compounded daily. (R&TC, § 19101.) Interest is not a penalty, but is compensation for a taxpayer’s use of money after it should have been paid to the state. (*Appeal of GEF Operating, Inc., supra.*) There is no reasonable cause exception to the imposition of interest, and interest is mandatory except where abatement is authorized under the law. (*Appeal of Moy, 2019-OTA-057P.*) Generally, to obtain relief from interest, taxpayers must qualify under one of the following three R&TC sections: 19104, 19112, or 21012. (*Ibid.*) Office of Tax Appeals has no authority to review FTB’s action under R&TC section 19112. (*Ibid.*) Appellants do not allege, and nothing in the record suggests, that there is any basis for interest abatement under R&TC sections 19104 and 21012. Therefore, appellants have not established that interest should be abated.

HOLDINGS


1. Appellants have not established reasonable cause for failing to timely file their 2019 tax return.
2. Appellants are not entitled to interest abatement.


DISPOSITION

FTB’s denial of appellants’ claim for refund is sustained.

DocuSigned by:

Eddy Y.H. Lam
Administrative Law Judge

We concur:

DocuSigned by:

Josh Lambert
Administrative Law Judge

DocuSigned by:

Michael F. Geary
Administrative Law Judge

Date Issued: 11/8/2022