

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:

P. WILLIAMSON AND
D. WILLIAMSON

) OTA Case No. 22039907
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OPINION

Representing the Parties:

For Appellants:

P. Williamson
D. Williamson

For Respondent:

Alisa L. Pinarbasi, Tax Counsel

A. KWEE, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, P. Williamson and D. Williamson, a married couple, (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$1,550.53 for the 2020 tax year.¹

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

¹ FTB’s Notice of Action identifies the claim amount as \$1,550.53, which equals the entire late payment penalty amount (\$1,552.76) less the amount written off by FTB (\$2.23). However, appellants claimed a lesser amount in their refund claim. The difference is because appellants self-assessed a \$138.00 penalty on their originally filed return and only claimed a refund for the remaining unpaid tax account balance subsequently asserted by FTB. For purposes of this Opinion, we treat the entire amount denied by FTB (inclusive of the \$138.00 self-assessed penalty amount) as the amount at issue in this appeal.

ISSUE

1. Whether appellant established a basis for abatement of the late payment penalty imposed pursuant to R&TC section 19132.²

FACTUAL FINDINGS

1. Appellants hired Moore, Gold & Associates, Inc. (MGA), a professional tax preparer, to prepare and electronically file their 2020 state income tax return with FTB.
2. Prior to filing the return, MGA provided a copy of the return to appellants to review, along with a cover sheet entitled “Filing Instructions.” The Filing Instructions listed a due date of October 15, 2021, stated that appellants’ return showed an amount due of \$28,370 and that tax payments exceeding \$20,000 must be remitted electronically, and asked appellants to return FTB Form CA 8879, California e-file Signature Authorization, to authorize MGA to e-file appellants’ return with FTB.
3. On April 26, 2021, the State Controller and FTB announced an extension of time from April 15, 2021, until May 17, 2021, for individual California taxpayers to pay tax due for the 2020 tax year.³
4. Thereafter, MGA electronically filed appellants’ joint California Resident Income Tax Return (Form 540) for the 2020 tax year on April 28, 2021, reporting \$28,232 in tax, plus a \$138 penalty, due with the return.
5. On May 22, 2021, appellants electronically remitted \$28,370 to FTB.
6. On August 27, 2021, FTB sent a State Income Tax Balance Due notice to appellant, asserting a late payment penalty of \$1,552.76, and a balance due (after applying payments) of \$1,435.64.
7. Appellants paid the balance on September 2, 2021.
8. Appellants timely filed a claim for refund on September 7, 2021, requesting abatement on the basis that they mistakenly relied upon the October 15, 2021 due date stated on the cover letter provided by MGA.

² FTB did not assess an underpayment of estimated tax penalty pursuant to R&TC section 19136(a). It is not clear from the record why the penalty is inapplicable because, although appellants filed FTB Form 5505 (Underpayment of Estimated Tax by Individuals and Fiduciaries), a copy of this form is not in the written record.

³ Regarding the due date, FTB cited to the following news release: <https://www.ftb.ca.gov/about-ftb/newsroom/2020-tax-year-extension-to-file-and-pay-individual.html>

9. On December 20, 2021, the Internal Revenue Service (IRS) abated the federal late payment penalty under the federal first-time abatement program.
10. FTB denied the refund claim on January 20, 2022.
11. This timely appeal followed. On appeal, appellants assert that they had reasonable cause for the late payment and, alternatively, ask for a one-time penalty abatement.

DISCUSSION

California imposes a late payment penalty for a taxpayer's failure to pay the amount of tax shown on a return before the due date, unless it is established that the late payment was due to reasonable cause and not due to willful neglect. (R&TC, § 19132(a)(1).) The late payment penalty is the sum of two figures that may not exceed 25 percent of the unpaid tax. (R&TC, § 19132(a)(2).) The first addend is five percent of the tax that remained unpaid as of the due date. (R&TC, § 19132(a)(2)(A).) The second addend is .5 percent of the unpaid tax balance per month for each month, or portion of a month, that the tax remains unpaid after the due date, not to exceed 40 months. (R&TC, § 19132(a)(2)(B).) For these purposes, the due date for payment of the tax is the due date for filing the return, determined without regard to any extension of time to file the return. (R&TC, § 19001.) FTB has authority to extend the date for payment of any franchise and income tax due under Division 2 of Part 10.2 of the R&TC for good cause. (R&TC, § 18567(c).)

Here, it is undisputed that FTB granted an extension of time to pay until May 17, 2021. It is further undisputed that appellants did not pay until May 22, 2021, five days after the extended payment due date. Therefore, a \$1,552.76 late payment penalty applies. Subtracting the \$2.23 written off by FTB, leaves a penalty balance of \$1,550.53, which is the total penalty amount paid by appellants and subject to this refund claim.⁴ This amount is equal to five percent of the unpaid tax amount of \$28,232 (i.e., \$1,411.60), plus an additional 5 percent of the unpaid tax for the monthly period that the amount remained unpaid (\$141.16). Appellants do not dispute the calculation of the penalty, and we find no error in the computation of the penalty.

First, appellants request a first-time penalty abatement because the IRS granted them a first-time abatement considering their timely filing history with the IRS for the same tax year. The IRS may abate the federal late-filing penalty for purposes other than reasonable cause under

⁴ The record does not indicate why FTB wrote off a portion of the liability. In any event, it is not at issue.

its first-time abatement policy. OTA is a different entity from the IRS, and OTA lacks statutory authority to make discretionary adjustments based on policy, such as considering whether to waive the late-filing penalty based on appellants' prior good filing history with the IRS or FTB.⁵ (*Appeal of Estate of R. Luebbert, Deceased, and V. Luebbert* (71-SBE-082) 1982 WL 11759 [no authority to make adjustments based on a taxpayer's ability to pay].) OTA's lack of authority in this matter is highlighted by the Legislature's passage of R&TC section 19132.5, which authorizes first-time abatement of state income taxes for certain individual filers, and which authority is statutorily limited to tax years starting on and after January 1, 2022. Here, the tax year at issue is the 2020 tax year. Therefore, appellant is not entitled to first-time abatement of the late-filing penalty.

Second, appellants assert reasonable cause as a basis for relief because their tax preparer provided a deadline of October 15, 2021, to them in the cover sheet for the Filing Instructions (which also noted that appellants had a balance due that needed to be electronically paid). The law pertaining to whether reasonable cause to excuse a late filing exists is persuasive authority in determining whether reasonable cause exists to excuse a late payment. (*Appeal of Berolzheimer* (86-SBE-172) 1986 WL 22860.) It is well-settled that a taxpayer's reliance on a tax professional to timely file a tax return is not reasonable cause for a late filing. (*United States v. Boyle* (1985) 469 U.S. 241; *Appeal of Boehme* (85-SBE-134) 1979 WL 4224.) As such, reliance on a tax preparer to timely pay the liability, or to inform the taxpayer the due date to timely pay the liability, is not reasonable cause. Appellants had a non-delegable duty to timely pay the liability and, as such, there is no basis to abate the late payment penalty.

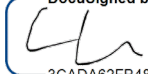
⁵ The IRS adopted a first-time abatement policy in 2001 for certain taxpayers with a good filing history, as provided in Section 20.1.1.3.3.2.1 of the Internal Revenue Manual, and this policy applies regardless of whether a late filing was due to reasonable cause. FTB does not have a comparable abatement policy for the 2020 tax year.

HOLDING

Appellants failed to establish a basis to abate the late payment penalty.

DISPOSITION

FTB's action is sustained.

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Andrew J. Kwee
Administrative Law Judge

Date Issued: 12/8/2022