

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 21119152  
A. KHILYUK )  
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**OPINION**

Representing the Parties:

For Appellant: A. Khilyuk  
For Respondent: Christopher M. Cook, Tax Counsel

K. GAST, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, A. Khilyuk (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing tax of \$15,621.00 and a late-filing penalty of \$3,905.25, plus applicable interest, for the 2017 tax year.<sup>1</sup>

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

**ISSUE**

Whether appellant is entitled to abatement of the late-filing penalty.

**FACTUAL FINDINGS**

1. FTB received information from a third-party source indicating appellant derived California source income in 2017 from the sale of real property located in this state, which may have triggered a California tax filing obligation. Based on this information, FTB issued to appellant a Request for Tax Return for the 2017 tax year, requesting either

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<sup>1</sup> Appellant initially did not file a 2017 California Nonresident Income Tax Return to report and pay taxes on gain from the sale of real property located in this state. However, during this appeal, appellant filed a 2017 joint California Nonresident Income Tax Return that self-reports California source income, tax, and an underpayment of estimated tax penalty. FTB indicates it “intends to accept appellant’s submitted return” but may audit the return in the future. Therefore, the only remaining issue is FTB’s imposition of the late-filing penalty for 2017.

- he provide a copy of his return (if one was already filed), file his return (if one was not filed), or determine if he had a filing requirement. Appellant did not respond.
2. FTB then issued a Notice of Proposed Assessment (NPA) for the 2017 tax year, which proposed to assess tax of \$15,621.00 and a late-filing penalty of \$3,905.25, plus applicable interest.
  3. Appellant protested FTB's NPA, but FTB affirmed it with a Notice of Action. This timely appeal followed.
  4. As noted above, on appeal, appellant filed a 2017 joint California Nonresident Income Tax Return with FTB that self-reports California source income, tax, and an underpayment of estimated tax penalty. FTB indicates it intends to accept appellant's return as filed but states appellant still disputes the late-filing penalty, which FTB has reduced to \$3,079.95 based on appellant's self-reported tax of \$12,319.00 on his return.<sup>2</sup>

#### DISCUSSION

R&TC section 19131 imposes a penalty for the failure to file a return on or before the due date, unless it is shown that the late filing is due to reasonable cause and not due to willful neglect. Here, it is undisputed FTB properly imposed the late-filing penalty. Because FTB does not assert willful neglect, the only issue is whether appellant has demonstrated reasonable cause for the late filing of his 2017 tax return.

To establish reasonable cause, the taxpayer must show that the failure to file a timely tax 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.) A late-filing penalty imposed by FTB is presumed to be correct, and the burden of proof is on the taxpayer to establish that reasonable cause exists to support an abatement of the penalty. (*Appeal of Xie*, 2018-OTA-076P.)

Appellant contends he did not initially file a 2017 California tax return because he was a California nonresident and did not know he was required to file. However, it is well settled that “ignorance of the law is not reasonable cause for the failure to comply with statutory

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<sup>2</sup> FTB incorrectly recomputes the late-filing penalty as \$3,079.95. Under R&TC section 19131, the late-filing penalty in dispute should be 20 cents less, or \$3,079.75 (i.e., \$12,319.00 x 25 percent).

requirements.” (*Appeals of Cremel and Koepfel*, 2021-OTA-222P.) “Although appellant [] may have had a sincere belief that [he] was not required to file a return in California for the [2017] tax year, that belief alone does not constitute reasonable cause for the failure to file a timely return,” and appellant “did not exercise ordinary care when [he] failed to acquaint [himself] with the requirements of California tax law.” (*Ibid.*) Simply stated, appellant has not alleged, or even shown, he took any steps to determine whether he had a 2017 California tax filing requirement, which is what a reasonably prudent businessperson would have done after receiving California source income from the sale of real property located in this state. (See *Appeal of Head and Feliciano*, 2020-OTA-127P.) Accordingly, appellant has not demonstrated the late-filing penalty should be abated for reasonable cause.

#### HOLDING

Appellant is not entitled to abatement of the late-filing penalty.

#### DISPOSITION

FTB’s action is sustained, but the late-filing penalty should be reduced to \$3,079.75, as noted above.

DocuSigned by:

*Kenneth Gast*

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Kenneth Gast  
Administrative Law Judge

We concur:

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*Josh Aldrich*

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Josh Aldrich  
Administrative Law Judge

DocuSigned by:

*Huy “Mike” Le*

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Huy “Mike” Le  
Administrative Law Judge

Date Issued: 1/17/2023