

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
D. HUFFORD

) OTA Case No. 220610671
)
)
)
)
)

OPINION

Representing the Parties:

For Appellant: D. Hufford

For Respondent: Paige Chang, Tax Counsel

L. KATAGIHARA, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, D. Hufford (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$1,027.79 for the 2019 tax year.

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

ISSUES

1. Whether appellant has established reasonable cause to abate the late filing penalty.
2. Whether appellant has established a basis upon which interest can be abated.

FACTUAL FINDINGS

1. Appellant untimely filed his 2019 California income tax return on April 15, 2021, reflecting a tax due of \$3,417.00. FTB accepted the return as filed but issued a Notice of Tax Return Change – Revised Balance Letter on July 15, 2021, imposing a late filing penalty of \$854.25 and interest in the amount of \$164.32.
2. By August 26, 2021, appellant remitted payment in full for the 2019 tax year.
3. Appellant timely filed a claim for refund of \$1,027.79 on February 2, 2022. FTB denied the claim for refund.
4. This timely appeal followed.

DISCUSSION

Issue 1: Whether appellant has established reasonable cause to abate the late filing penalty.

A late filing penalty will be imposed when a taxpayer fails to file a tax return on or before its due date, unless the taxpayer establishes that the late filing was due to reasonable cause and was not due to willful neglect. (R&TC, § 19131(a).) When FTB imposes a late filing penalty, the law presumes that the penalty was imposed correctly. (*Appeal of Xie*, 2018-OTA-076P.) The burden of proof is on the taxpayer to show that reasonable cause exists to support abating the penalty. (*Ibid.*) Here, appellant has not asserted that FTB improperly imposed or computed the late filing penalty. Additionally, FTB has not asserted appellant willfully neglected to timely file his tax return, and therefore, the only issue is whether appellant has established reasonable cause to abate the late filing penalty.

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 an ordinarily intelligent and prudent businessperson would have so acted under similar circumstances. (*Appeal of Belcher*, 2021-OTA-284P.) Unsupported assertions are insufficient to satisfy the taxpayer's burden. (*Appeal of Xie, supra.*)

Here, appellant argues that reasonable cause exists to abate the late filing penalty because he hired H&R Block to prepare and e-file his 2019 tax return and was not aware until April 2021, when FTB returned two payments that appellant made towards his 2019 taxes, that H&R Block had not e-filed appellant's 2019 tax return. Unfortunately, appellant has not provided evidentiary support regarding this argument. Specifically, appellant has not provided documentation (such as a confirmation that the e-filing was completed or successful) to establish that an ordinarily intelligent and prudent businessperson would have believed that H&R Block e-filed the tax return. A taxpayer must provide credible and competent evidence supporting a claim of reasonable cause for the penalty to be abated, as unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Xie, supra.*) Furthermore, reliance on a tax preparer to file returns is not reasonable cause under the law, as appellant has a non-delegable obligation to ensure his returns are timely filed. (*U.S. v. Boyle* (1985) 469 U.S. 241, 251.) Therefore, appellant has not shown reasonable cause to abate the late filing penalty.

Issue 2: Whether appellant has established a basis upon which interest can be abated.

Imposing interest on a tax deficiency is mandatory. (R&TC, § 19101(a).) Interest is also charged on penalties. (R&TC, § 19101(c)(2).) Interest is not a penalty but is compensation for the taxpayer's use of money after it should have been paid to the state, and it can only be abated in certain limited situations when authorized by law. (*Appeal of Moy*, 2019-OTA-057P.) There is no reasonable cause exception to the imposition of interest. (*Ibid.*)

To obtain interest abatement, appellant must qualify under either R&TC section 19104 or R&TC section 21012.¹ First, R&TC section 19104 does not apply here because appellant does not allege, and the evidence does not show, that the interest at issue is attributable, in whole or in part, to any unreasonable error or delay by an officer or employee of FTB when performing a ministerial or managerial act. Second, R&TC section 21012 does not apply because appellant does not allege, and the evidence does not show, FTB provided appellant with any requested written advice. Accordingly, appellant has not established that he is entitled to interest abatement.

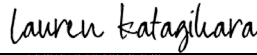
¹ Pursuant to R&TC section 19112, FTB also has discretion to waive interest, but Office of Tax Appeals does not have jurisdiction to review FTB's exercise of such discretion. (See *Appeal of Moy*, *supra*.)

HOLDINGS

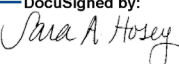
1. Appellant has not established reasonable cause to abate the late filing penalty.
2. Appellant has not established a basis upon which interest can be abated.


DISPOSITION

FTB’s action is sustained in full.

DocuSigned by:

F595B34010D8470...
 Lauren Katagihara
 Administrative Law Judge

We concur:

DocuSigned by:

6D3FE4A0CA514E7...
 Sara A. Hosey
 Administrative Law Judge

DocuSigned by:

C81F7DA37831416...
 Josh Lambert
 Administrative Law Judge

Date Issued: 1/24/2023