

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 220610569
L. WEBER AND)
M. WEBER)
_____)

OPINION

Representing the Parties:

For Appellants: Jason L. Morris, CPA

For Respondent: Christopher T. Tuttle, Tax Counsel III

E. LAM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, L. Weber and M. Weber (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$20,073.53, for the 2019 tax year.¹

Appellants waived the right to an oral hearing; therefore, the matter is being decided by the Office of Tax Appeals (OTA) based on the written record.

ISSUES

1. Whether appellants have established reasonable cause to abate the late filing penalty.
2. Whether appellants are entitled to interest abatement.

FACTUAL FINDINGS

1. On June 10, 2020, appellants provided their long-time return preparer with documentation to complete their 2019 California personal income tax return.
2. From June 2020 through August 2020, appellants were in contact with their preparer, who assured appellants that they were on extension, and he would complete their 2019 return shortly.

¹ Appellants requested a total refund in the amount of \$20,073.53. It appears that that appellants are requesting abatement of the late filing penalty of \$18,894.00, and the remaining amount of \$1,179.53 relates to interest.

3. From September 2020 to November 2020, appellants repeatedly attempted to contact the return preparer and, though they were able to speak to the preparer's office staff to confirm the preparer's business continued operation, appellants received no further communication from the preparer.
4. On November 24, 2020, appellants retained a new tax return preparer.
5. On March 15, 2021, appellants untimely filed a joint 2019 California Nonresident or Part-Year Resident Income Tax Return (Form 540NR).
6. FTB accepted appellants' 2019 return as filed, but subsequently issued a Notice of Tax Return Change – Revised Balance to appellants imposing a late filing penalty of \$18,894, plus applicable interest.
7. Appellants made a payment of \$20,073.58 and filed a claim for refund seeking abatement of the late filing penalty and applicable interest.
8. FTB denied appellants' claim for refund, and this timely appeal followed.

DISCUSSION

Issue 1: Whether appellants have established reasonable cause to abate the late filing penalty.

A personal income tax return generally is due on or before April 15 following the close of the calendar year. (R&TC, § 18566.) However, California provides a special filing date for taxpayers who are “residing or traveling abroad.”² (R&TC, § 18567(a)(2)(A); FTB Notice 91-3.) For these taxpayers, California tax returns are due on or before June 15 following the close of the calendar year, and FTB allows an automatic six-month extension if the return is filed by December 15. (*Ibid.*; see R&TC, § 18567(a)(1); see also Cal. Code Regs., tit. 18, § 18567(a).) In response to the COVID-19 pandemic, and pursuant to Internal Revenue Code (IRC) section 7508A, California postponed the individual 2019 tax return filing deadline to July 15, 2020.³ Since a postponement granted pursuant to IRC section 7508A does not change

² California does not incorporate federal rules for purposes of determining whether a taxpayer is “residing or traveling abroad,” as that phrase is used in R&TC section 18567(a)(2)(A). (See R&TC, §§ 18566, 18567 [California's statutory filing dates do not reference or otherwise incorporate federal law].) OTA is not aware of any controlling California authority that has defined the phrase “residing or traveling abroad” for purposes of this rule. However, OTA need not decide the meaning of this phrase because it is not disputed by the parties that appellants were “residing or traveling abroad” in the 2019 tax year for purposes of R&TC section 18567(a)(2)(A).

³ See *State Postpones Tax Deadlines Until July 15 Due to the COVID-19 Pandemic*, March 18, 2020, available at: <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2020-3-state-postpones-tax-deadlines-until-july-15-due-to-the-covid-19-pandemic.html>; R&TC, § 18572.

the original statutory due date of the tax return, the COVID-19 filing postponement does not modify the automatic six-month extension provided by R&TC section 18567. Therefore, the extended due date for taxpayers who are “residing or traveling abroad” in the 2019 tax year remains to be on or before December 15, 2020. (R&TC, § 18567(a)(2)(A); FTB Notice 91-3.)

Appellants contend that they relocated from California to New Zealand in July 2019.⁴ Thereafter, appellants filed their 2019 tax return on March 15, 2021, which is after both the July 15, 2020 postponed due date and December 15, 2020 extended due date for taxpayers who are “residing or traveling abroad.” (See FTB Notice 91-3.)

California imposes a penalty for failing to file a return on or before the due date, unless the taxpayer shows that the failure is due to reasonable cause and not due to willful neglect. (R&TC, § 19131(a).) When FTB imposes a late filing penalty, it is presumed to have been correctly imposed, and the burden of proof is on the taxpayer to show that reasonable cause exists to abate the penalty. (*Appeal of Xie*, 2018-OTA-076P.) To overcome the presumption of correctness, the taxpayer must provide credible and competent evidence supporting a claim of reasonable cause. (*Ibid.*) To establish reasonable cause, the taxpayer 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 prudent businessperson to have so acted under similar circumstances. (*Appeal of Head and Feliciano*, 2020-OTA-127P.)

In *U.S. v. Boyle* (1985) 469 U.S. 241, 249 (*Boyle*),⁵ the U.S. Supreme Court established a bright-line rule (*id.* at p. 248) and expressly held that “[t]he failure to make a timely filing of a tax return is not excused by the taxpayer’s reliance on an agent, and such reliance is not ‘reasonable cause’ for a late filing” (*Id.* at p. 252.) “Reliance by a lay person on a lawyer [or an accountant] is of course common; but that reliance cannot function as a substitute for compliance with an unambiguous statute.” (*Id.* at p. 251.) Furthermore, every taxpayer has a personal, non-delegable obligation to file a tax return by the due date. (*Appeal of Summit Hosting LLC*, 2021-OTA-216P.)

⁴ There is no evidence in the record to support appellants’ contention that they relocated to New Zealand or that they are “residing or traveling abroad” for purposes of R&TC section 18567(a)(2)(A). However, FTB does not dispute appellants’ contentions regarding their relocation or residency.

⁵ Because the relevant language of R&TC section 19131 pertaining to the reasonable cause exception is patterned after IRC section 6651, the federal courts’ interpretation of the “reasonable cause” standard is persuasive authority in determining the proper construction of these California statutes. (*Appeal of Jones*, 2021-OTA-144P.)

Appellants contend that they had reasonable cause for their failure to timely file their 2019 California return because their former tax preparer “suddenly disappeared with no explanation.” On June 10, 2020, appellants provided tax documents to their former tax preparer for tax return preparation. Appellants contend that they exercised ordinary business care and prudence as demonstrated through their continued efforts from July 10, 2020, through October 13, 2020. During those periods, the former tax preparer assured appellants that he would be able to prepare the tax return. It was only when the former tax preparer was unreachable that appellants realized that they needed to find a new tax preparer. However, none of these facts are sufficient to establish reasonable cause in this appeal. It is well-settled law that a taxpayer’s reliance on a tax preparer or an agent to timely file their taxes does not constitute reasonable cause because they have a personal nondelegable obligation to file their taxes by the due date. (*Boyle, supra; Appeal of Summit Hosting LLC, supra.*)

Additionally, appellants retained a new tax preparer, on November 24, 2020, 25 days before the due date of their return on December 15, 2020, but failed to file their return until March 15, 2021. Here, evidence in the record did not demonstrate that appellants exercised ordinary business care and prudence so that their new tax preparer could complete their tax return by the December 15, 2020 extended deadline.

Issue 2: Whether appellants are entitled to interest abatement.

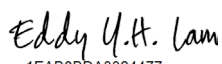
R&TC section 19101 provides that taxes are due and payable as of the original due date of the taxpayer’s return (without regard to extension). If tax is not paid by the original due date or if FTB assesses additional tax and that assessment becomes due and payable, the taxpayers are charged interest on the resulting balance due, compounded daily. (R&TC, § 19101.) Interest is not a penalty, but is compensation for taxpayers’ use of money after it should have been paid to the state. (*Appeal of GEF Operating, Inc., 2020-OTA-057P.*) 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.*) OTA 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 to abate the late filing penalty.
2. Appellants are not entitled to interest abatement.

DISPOSITION

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

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 Eddy Y.H. Lam
 Administrative Law Judge

We concur:

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 Administrative Law Judge

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 Veronica I. Long
 Administrative Law Judge

Date Issued: 7/27/2023