

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 221212063
S. DESAI AND)
S. DESAI)
_____)

OPINION

Representing the Parties:

For Appellants: Richard Germic, CPA

For Respondent: Josh Ricafort, Tax Counsel

S. HOSEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, S. Desai and S. Desai (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$4,904.75 for the 2020 tax year.

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.)

Office of Tax Appeals (OTA) Administrative Law Judge Sara A. Hosey held an oral hearing for this matter electronically, on June 15, 2023. At the conclusion of the hearing, the record was closed and this matter was submitted for an opinion.

ISSUE

Whether appellants have established reasonable cause to abate the late-filing penalty under R&TC section 19131.

FACTUAL FINDINGS

1. FTB issued appellants a Request for Tax Return for the 2020 tax year based on information that appellants filed a federal tax return using a California address.

2. Appellants untimely filed their joint 2020 California Resident Income Tax Return on June 6, 2022, and included a payment with their return.
3. FTB then issued appellants a Notice of Tax Return Change – Revised Balance imposing a late-filing penalty, plus interest.
4. Appellants requested a waiver of the late-filing penalty because they had attempted to file and pay electronically timely.
5. FTB issued an Income Tax Due Notice, imposing the late-filing penalty, plus interest.
6. Appellants paid the balance due in full.
7. Appellants then filed a claim for refund requesting abatement of the late-filing penalty asserting that their tax preparer timely filed their return electronically. Appellants argued that they did not discover the return had not been filed or that that their electronic payment was not withdrawn from their bank account until they received the Request for Tax Return from FTB.
8. FTB denied appellants' claim for refund based on a finding that appellants had not established reasonable cause to abate the late-filing penalty.
9. This timely appeal followed.

DISCUSSION

California imposes a penalty for the failure to timely file a return, unless it is shown that the late filing is due to reasonable cause and not willful neglect. (R&TC, § 19131(a).) When FTB imposes a penalty, the law presumes that the penalty was imposed correctly, and the burden of proof is on the taxpayer to establish otherwise. (*Appeal of Xie*, 2018-OTA-076P.) To overcome the presumption of correctness attached to the penalty, a taxpayer must provide credible and competent evidence supporting a claim of reasonable cause; otherwise, the penalty cannot be abated. (*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. (*Appeal of Head and Feliciano*, 2020-OTA-127P.) The taxpayer bears the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Appeal of Belcher*, 2021-OTA-284P.) It is well established that each taxpayer has a personal, non-delegable obligation to ensure the timely filing of a tax return, and thus, reliance on an agent to perform this act does not constitute reasonable cause to abate a late-filing penalty. (*U.S. v.*

Boyle (1985) 469 U.S. 241, 251-252; *Appeal of Quality Tax & Financial Services, Inc.*, 2018-OTA-130P.)

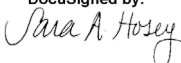
Appellants claim they relied on their tax preparer to electronically file their 2020 income tax return. As noted above, each taxpayer has a personal, non-delegable obligation to ensure the timely filing of a tax return, and thus, reliance on an agent to perform this act does not constitute reasonable cause to abate a late-filing penalty. (*U.S. v. Boyle, supra; Appeal of Quality Tax & Financial Services, Inc., supra.*) Thus, appellants' reliance on their tax preparer to timely prepare and file a 2020 return on their behalf is not sufficient to establish reasonable cause. Appellants also fail to describe what steps they took, if any, to follow up with their tax preparer regarding the preparation and filing of their tax return. The exercise of ordinary business care and prudence requires appellants to do more than merely delegate the tasks necessary to timely file the return; it also requires appellants to take action to verify the return had been successfully transmitted. (*Appeal of Fisher, 2022-OTA-337P.*) Ordinarily intelligent and prudent businesspersons would have verified the status of the filing of their return shortly before the filing deadline and obtained receipt or confirmation of the filing. Appellants have not shown that they ever followed up with their tax preparer during the relevant time period and have thus failed to establish reasonable cause for the late filing of the return. Therefore, the late-filing penalty may not be abated.

HOLDING

Appellants have not established reasonable cause to abate the late-filing penalty under R&TC section 19131.

DISPOSITION

FTB's denial is sustained.

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Sara A. Hosey
Administrative Law Judge

Date Issued: 8/3/2023