

3. FTB denied appellants' abatement request, and this timely appeal followed.

DISCUSSION

R&TC section 19131 imposes a late filing penalty on a taxpayer who fails to file a return by either the due date or the extended due date unless it is shown that the failure was due to reasonable cause and not willful neglect. Generally, 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 intelligent and prudent businessperson to have so acted under similar circumstances. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.) Ignorance of a filing requirement or a misunderstanding of the law generally does not excuse a late filing. (*Ibid.*) Each taxpayer has a personal, non-delegable obligation to file a tax return by the due date. (*Appeal of Summit Hosting LLC*, 2021-OTA-216P, citing *U.S. v. Boyle* (1985) 469 U.S. 241.)

Appellants do not contest whether the late filing penalty was properly imposed or computed. Therefore, the only issue is whether appellants established reasonable cause to abate the late filing penalty. Appellants argue that the late filing of their joint tax return for the 2020 tax year constitutes reasonable cause because “this was the first time [appellant-husband] was paying tax as a partner” of a law firm and that there was confusion. Appellants also contend that appellant-wife prepared the federal tax return and appellants did not notice that a California K-1 was issued to appellant-husband. It appears that appellants are arguing that the late filing penalty should be abated because: (1) it was their first time receiving California source income; (2) there was an oversight where appellants did not notice that appellant-husband was issued a California K-1; and (3) there was confusion about whether they had a California filing requirement, which was compounded by the pandemic and lack of professional advice.

However, nothing in the record suggests that appellants' failure to timely file the 2020 tax return occurred despite exercising ordinary business care and prudence. Here, appellants contend that it was appellants' first time receiving California source income and that appellants inadvertently overlooked the fact that a California K-1 was issued to appellant-husband. Appellant also alleges that there was confusion, compounded by the pandemic and lack of professional advice regarding whether appellants have a California tax filing requirement. However, to reiterate, ignorance of a filing requirement or a misunderstanding of the law generally does not excuse a late filing. (*Appeal of GEF Operating, Inc.*, *supra.*) Furthermore,

California does not allow first time abatement of the late filing penalty for the 2020 tax year.¹
Therefore, appellants have not established any legal basis to abate the late filing penalty.

HOLDING

Appellants have not established reasonable cause for failing to timely file their 2020 tax return.

DISPOSITION

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

DocuSigned by:
Eddy Y.H. Lam
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Eddy Y.H. Lam
Administrative Law Judge

We concur:

DocuSigned by:
Tommy Leung
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Tommy Leung
Administrative Law Judge

DocuSigned by:
Andrea L.H. Long
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Andrea L.H. Long
Administrative Law Judge

Date Issued: 8/10/2023

¹ R&TC section 19132.5 authorizes first-time abatement of certain California income tax penalties for certain qualified individual filers, and which authority is statutorily limited to tax years starting on and after January 1, 2022, which is not applicable to this appeal.