

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 220811218
R. VALDIVIA AND)
M. VALDIVIA)
_____)

OPINION

Representing the Parties:

For Appellants: David J. Fisher, CPA

For Respondent: Josh Ricafort, Attorney

A. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, R. Valdivia and M. Valdivia (appellants) appeal an action by the Franchise Tax Board (respondent) denying appellants’ claim for refund of \$85,903 for the 2020 tax year.

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

ISSUE

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

FACTUAL FINDINGS

1. Appellants untimely filed a 2020 California tax return on December 6, 2021. Appellants reported tax due of \$343,612.
2. Respondent subsequently informed appellants that respondent imposed a late filing penalty of \$85,903 and appellants paid the penalty.
3. Appellants filed a claim for refund of the late filing penalty, asserting that their late filing was caused by their tax preparer who had suffered from a medical emergency and failed to file their return by the extended due date. Respondent denied the refund claim.
4. This timely appeal followed.

DISCUSSION

A late filing penalty will be imposed when taxpayers fail to file a tax return on or before its due date, unless the taxpayers establish that the late filing was due to reasonable cause and was not due to willful neglect. (R&TC, § 19131(a).) Respondent’s imposition of the late filing penalty is presumed correct, and the burden of proof is on the taxpayers to establish otherwise. (*Appeal of Xie*, 2018-OTA-076P.)

To establish reasonable cause, a taxpayer must show that the failure to timely file a 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 Head and Feliciano*, 2020-OTA-127P.) The failure to timely file a tax return is not excused by a taxpayer’s reliance on an agent and such reliance is not reasonable cause for a late filing. (*U.S. v. Boyle* (1985) 469 U.S. 241, 252.)

Appellants argue that they had reasonable cause for failing to timely file their tax return because their tax preparer, who was in possession of their tax documents, became suddenly ill. According to appellants, on October 1, 2021, appellants’ tax preparer informed them that she was not feeling well. Unbeknownst to them, their tax preparer was admitted into the hospital emergency room the next day. Appellants assert that they attempted to reach their tax preparer leading up to the October 15, 2021 automatic extended deadline, but to no avail. Their tax preparer finally contacted appellants on October 22, 2021, and informed them that she was unable to complete and file their returns due to her health problems. Appellants were referred to a CPA who ultimately filed their 2020 tax return on December 6, 2021.

Here, appellants’ recitation of events does not establish reasonable cause. *U.S. v. Boyle* describes the taxpayer’s “fixed and clear” duty as “an obligation to ascertain the statutory deadline and then to meet that deadline, except in a very narrow range of situations.” (*U.S. v. Boyle, supra*, 469 U.S. 241 at pp. 249-250.) Reliance on a tax professional may constitute reasonable cause if appellants relied on the professional’s substantive advice; however, delegating the duty of filing to an agent does not fall within the “very narrow range of situations” in which failing to meet the filing deadline can be excused. (*Ibid.*) Appellants have not alleged or provided evidence that the late filing of the tax return was due to any substantive advice given by their tax preparer.

Appellants also argue that since their tax documents were with their tax preparer, they could not have timely filed their return; however, this is also unpersuasive. Generally, an asserted lack of documentation does not, by itself, constitute reasonable cause. (*Appeal of Moren*, 2019-OTA-176P.) In this case, it is apparent that appellants did at one point have the pertinent documentation needed to prepare the return but gave their only copies of the documents to their tax preparer. Failing to keep copies of tax documentation is not an exercise of ordinary business care and prudence.

Appellants also note their good filing history and their recent financial hardships. Appellants state that they have always filed timely tax returns in the past. In addition, appellants contend that R. Valdivia recently underwent surgery for a possibly malignant tumor and their business revenue decreased by \$3 million in the 2021 tax year.

Although the Office of Tax Appeals is sympathetic to appellants' circumstances, it can only grant relief where the law specifically allows. (See *Appeal of Xie, supra.*) Regarding appellants' filing history, neither the California legislature nor respondent has adopted a penalty abatement program for the 2020 tax year.¹ The Office of Tax Appeals also lacks authority to make discretionary adjustments to taxpayers' assessment based on their ability to pay. (*Appeal of Robinson*, 2018-OTA-059P.)² Under these circumstances, there is no reasonable cause to abate the late filing penalty.

¹ R&TC section 19132.5, effective for tax years beginning on or after January 1, 2022, allows an individual taxpayer to request a one-time abatement of a timeliness penalty. As the 2020 tax year is at issue here, this newly enacted provision is inapplicable.

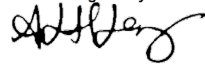
² Respondent may consider appellants' inability to pay under its payment arrangement or offer-in-compromise programs. If appellants are experiencing difficulties in paying their liabilities once the decision in this appeal is final, they may contact respondent to discuss payment options. (See <https://www.ftb.ca.gov/pay/if-you-cant-pay/index.html>.)

HOLDING

Appellants have not established reasonable cause to abate the late filing penalty.


DISPOSITION

Respondent’s action denying appellants’ claim for refund is sustained.

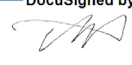
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Andrea L.H. Long
Administrative Law Judge

We concur:

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Sheriene Anne Ridenour
Administrative Law Judge

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Andrew Wong
Administrative Law Judge

Date Issued: 9/7/2023