

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
N. SUWANNAGATE

) OTA Case No. 230513351
)
)
)
)

OPINION

Representing the Parties:

For Appellant: N. Suwannagate

For Respondent: Lawrence Xiao, Attorney

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, N. Suwannagate (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$1,562.75 for the 2021 taxable year.

Appellant 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, § 30209.05.) Appellant waived the right to an oral hearing; therefore, the Office of Tax Appeals decides the matter based on the written record.

ISSUE

Has appellant established reasonable cause to abate the late-filing penalty?

FACTUAL FINDINGS

1. Appellant filed a 2021 California Resident Income Tax Return late on November 25, 2022, reporting total tax of \$6,251.
2. FTB sent appellant a State Income Tax Balance Due Notice (Notice) showing tax due of \$1,618 and imposing a late-filing penalty of \$1,562.75, plus applicable interest. The Notice includes tax due in addition to the late-filing penalty.
3. Appellant paid \$4,633 of the \$6,251 shown on the return on July 6, 2022. The remaining balance of \$1,618 was not paid until January 5, 2023.

4. FTB denied appellant's claim for refund, and this timely appeal followed.

DISCUSSION

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.) The late-filing penalty is calculated at 5 percent of the tax due for each month, or fraction of each month, the return is late, with a maximum penalty of 25 percent of the tax due. (R&TC, § 19131(a).) When FTB imposes a penalty, it is presumed to have been imposed correctly. (*Appeal of Mauritzson*, 2021-OTA-198P.) A taxpayer may rebut this presumption by providing credible and competent evidence supporting abatement of the penalty for 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. (*Ibid.*)

Appellant asserted on protest with FTB that the penalty imposed by FTB was due to an error the accountant made by including appellant's son on the return although appellant's son had already filed his own tax return. On appeal, appellant first asserts that the penalty was incorrectly calculated because FTB used 25 percent of total tax reported instead of 25 percent of the tax owed. In a reply brief, appellant asserts the return was approved for filing on June 30, 2022, and appellant was unaware that the return was not filed until November 25, 2022. Appellant contends that it was the accountant's mistake that caused the late filed return. Appellant provides an email exchange verifying that the return was approved by appellant on June 30, 2022.

R&TC section 19131(c) provides that for the purpose of calculating the late-payment penalty, the amount shown on the return is reduced by timely payments. Appellant's tax payments made on July 6, 2022, and January 5, 2023, were not made by the April 15, 2022 payment deadline for the 2021 taxable year. (R&TC, §§ 19001 & 18566.) Therefore, FTB properly computer the penalty.

A taxpayer's reliance on a tax preparer or agent to timely file a tax return does not constitute reasonable cause. (See *U.S. v. Boyle* (1985) 469 U.S. 241, 247 & 251.) Reliance on a tax adviser must involve reliance on substantive tax advice and not on simple clerical duties. (*Appeal of Mauritzson, supra.*) To establish that reasonable cause exists, a taxpayer must show

that he or she reasonably relied on a tax professional for substantive tax advice as to whether a tax liability exists and that the following conditions are met: (1) the person relied on by the taxpayer is a tax professional with competency in the subject tax law; and (2) the tax professional's advice is based on the taxpayer's full disclosure of relevant facts and documents. (*Appeal of Summit Hosting LLC*, 2021-OTA-216P.)

Appellant has not explained what steps, if any, appellant took to ascertain that the tax return for 2021 was filed before the extended due date. The emails between appellant and the tax preparer contain no confirmation that would indicate the tax return had been submitted or filed by the tax preparer. A reasonably prudent person would have checked to see that the tax return was actually filed and would have made the required payment by the payment due date. Accordingly, appellant did not exercise ordinary business care and prudence.


Finally, appellant asserts that a good history of meeting tax obligations warrants abatement of the late-filing penalty. However, for the 2021 taxable year, there is no California legal authority that allows for abatement of the late-filing penalty based solely on good filing and payment history. (See *Appeal of Xie*, 2018-OTA-076P; but see R&TC, § 19132.5 [for taxable years beginning on or after January 1, 2022, an individual taxpayer shall receive, under certain conditions, a one-time abatement of the late-filing penalty].)

HOLDING

Appellant has not established reasonable cause to abate the late-filing penalty.

DISPOSITION

FTB's action denying appellant's claim for refund is sustained.

DocuSigned by:

0CC6C6ACCC6A44D...
Teresa A. Stanley
Administrative Law Judge

Date Issued: 11/9/2023