

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
M. MAGNUSSON AND) OTA Case No. 230412979
B. MAGNUSSON)
_____)

OPINION

Representing the Parties:

For Appellants: Dean Pearson, CPA

For Respondent: Alisa L. Pinarbasi, Attorney

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. Magnusson and B. Magnusson (appellants) appeal an action by the Franchise Tax Board (respondent) denying appellants’ claim for refund of \$6,698.88 for the 2020 taxable year.

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

ISSUE

Whether the late payment penalty should be abated.

FACTUAL FINDINGS

1. Appellants did not pay their 2020 California and federal income taxes until October 15, 2021, the same day their 2020 California non-resident income tax return was filed. Consequently, respondent imposed a late payment penalty, the calculation of which is not disputed.
2. Appellants paid the late payment penalty, and then filed a refund claim therefore based on reasonable cause, which respondent denied.

DISCUSSION

The due date for payment of taxes is the due date for filing the return, determined without regard to any extension of time to file the return. (R&TC, § 19001.) The late payment penalty may be abated where the failure to make a timely payment was due to reasonable cause and not willful neglect. (R&TC, § 19132(a)(1).) To establish reasonable cause, the taxpayer must show that the failure to timely pay occurred despite the exercise of ordinary business care and prudence. (*Appeal of Scanlon*, 2018-OTA-075P.) Unsupported assertions are insufficient to meet this burden. (*Ibid.*)

Here, appellants assert that they hired professionals to prepare, file, and pay their taxes on time and, due to COVID-19 complications, neither their accountant nor taxpayer could make their payment timely. Furthermore, appellants contend that this was an isolated incident.

However, the exercise of ordinary business care and prudence requires taxpayers to do more than simply make the necessary arrangements for a payment to be processed. (See *Appeal of Scanlon, supra.*) It is well settled that a taxpayer's reliance on an agent, such as an accountant, to file a return or pay tax by the due date is not reasonable cause because a taxpayer has a personal, non-delegable obligation to meet statutory deadlines. (See *U.S. v Boyle* (1985) 469 U.S. 241, 252; *Appeal of Quality Tax & Financial Services, Inc.*, 2018-OTA-130P.) Moreover, in recognition of the difficulties faced by taxpayers due to COVID-19, California postponed the payment due date for 2020 personal income taxes to May 17, 2021.¹ Here, the record contains no explanation or substantiation of how COVID-19 affected the timely payment of appellants' 2020 taxes. The record does show that the IRS also imposed a late 2020 payment penalty on appellants, which was not abated. For these reasons, this panel cannot conclude that reasonable cause was established by appellants.

¹ (See <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2021-03-state-tax-deadline-for-individuals-postponed-until-may-17-2021.html>.)

HOLDING

The late payment penalty cannot be abated.

DISPOSITION

Respondent's action in denying appellants' claim for refund is sustained.

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Tommy Leung
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Tommy Leung
Administrative Law Judge

We concur:

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Eddy Y.H. Lam
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Eddy Y.H. Lam
Administrative Law Judge

DocuSigned by:
Richard Tay
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Richard Tay
Administrative Law Judge

Date Issued: 12/14/2023