

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 230212636
A. ASBELL)
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OPINION

Representing the Parties:

For Appellant: A. Asbell

For Respondent: Topher Tuttle, Attorney

For Office of Tax Appeals: Sean Erdman, Graduate Student Assistant

J. LAMBERT, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, A. Asbell (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$629.50 for the 2020 tax year.¹

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

ISSUES

1. Whether appellant has shown reasonable cause for the late filing of her tax return.
2. Whether the collection cost recovery fee should be abated.

FACTUAL FINDINGS

1. On March 18, 2022, appellant untimely filed her 2020 California Resident Income Tax Return.
2. On March 24, 2022, FTB sent appellant a Notice of Tax Return Change – Revised Balance, imposing a late filing penalty of \$313.50 and applicable interest.

¹ On appeal, appellant submitted two separate appeal letters, one appealing a claim for refund denial of the late filing penalty of \$313.50 for the 2020 tax year and the other appealing a claim for refund denial of the collection cost recovery fee of \$316.00 for the 2020 tax year. Thus, the total amount in dispute is \$629.50.

3. On May 4, 2022, FTB issued an Income Tax Due Notice, stating that if appellant did not pay the balance due, then FTB may pursue collection action. Subsequently, on June 17, 2022, FTB issued a Final Notice Before Levy and Lien stating if appellant did not pay the balance by the due date provided, that collection action would be taken against appellant and a collection fee may be imposed. When appellant did not remit payment of the balance due, FTB pursued collection action of the balance and imposed a collection cost recovery fee of \$316.00.
4. On August 19, 2022, appellant paid the balance due in full and filed a claim for refund for the late filing penalty of \$313.50 and collection cost recovery fee of \$316.00, which FTB denied.
5. Appellant timely filed this appeal.

DISCUSSION

Issue 1: Whether appellant has shown reasonable cause for the late filing of her tax return.

California imposes a penalty for the failure to file a return on or before the due date, unless it is shown that the late filing was due to reasonable cause and not due to willful neglect. (R&TC, § 19131(a).) To establish reasonable cause, a taxpayer must show that the failure to file a timely return occurred despite the exercise of ordinary business care and prudence, or that cause existed as would prompt an ordinarily intelligent and prudent businessperson to have so acted under similar circumstances. (*Appeal of Fisher*, 2022-OTA-337P.) When FTB imposes a penalty, the law presumes that the penalty was correctly imposed, and the burden of proof is on the taxpayer to establish otherwise. (*Ibid.*)

Reasonable cause is established when a taxpayer shows reasonable reliance on the advice of an accountant or attorney that it was unnecessary to file a return, even when such advice turned out to have been mistaken. (*U.S. v. Boyle* (1985) 469 U.S. 241, 250 (*Boyle*); *Appeal of Mauritzson*, 2021-OTA-198P.) When an accountant or attorney advises a taxpayer on a substantive matter of tax law, such as whether a liability exists, it is reasonable for the taxpayer to rely on that advice. (*Boyle, supra*, 469 U.S. at p. 251.) However, that reliance cannot function as a substitute for compliance with an unambiguous tax statute regarding filing deadlines. (*Ibid.*) This is because taxpayers have a personal and nondelegable duty to file a return on time. (*Id.* at p. 247.)

Appellant does not contend that the late filing penalty was improperly imposed or computed.² Rather, appellant asserts that reasonable cause exists because her tax preparer failed to timely file the return with FTB. However, reliance on a tax preparer to file her return does not constitute reasonable cause because appellant had a non-delegable obligation to file her tax return by the due date. (See *Boyle, supra*, 469 U.S. at p. 247.) Thus, appellant has not shown reasonable cause for the untimely filing of her return.

Issue 2: Whether the collection cost recovery fee should be abated.

R&TC section 19254(a)(1) requires FTB to impose a collection cost recovery fee when FTB notifies a taxpayer that the continued failure to pay an amount due may result in the imposition of the fee, and the taxpayer fails to timely pay the amount due in response to the notice. Once FTB properly imposes the fee, there is no language in the statute that would excuse the fee for any reason, including reasonable cause. (See *Appeal of Auburn Old Town Gallery, LLC*, 2019-OTA-319P.)

Here, the collection cost recovery fee was properly imposed after appellant failed to remit payment for the balance due after FTB sent her a Final Notice Before Levy and Lien. Accordingly, the collection cost recovery fee cannot be abated.

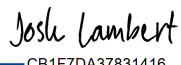
² Appellant's return was due on May 17, 2021. FTB postponed the state filing and payment deadline for 2020 tax returns from April 15, 2021, to May 17, 2021, due to the COVID-19 pandemic. (See <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2021-03-state-tax-deadline-for-individuals-postponed-until-may-17-2021.html>; R&TC, § 18572.) Appellant did not file her return until March 18, 2022.

HOLDINGS

1. Appellant has not shown reasonable cause for the late filing of her tax return.
2. The collection cost recovery fee should not be abated.

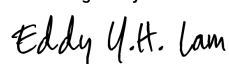
DISPOSITION

FTB's action is sustained in full.

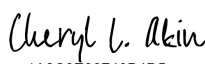
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Josh Lambert
 Administrative Law Judge

We concur:

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Eddy Y.H. Lam
 Administrative Law Judge

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Cheryl L. Akin
 Administrative Law Judge

Date Issued: 1/18/2024