

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
A. KWOK)
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)
)
)
_____) OTA Case No. 230312864

OPINION

Representing the Parties:

For Appellant: Chuk Shan Kwan, Representative

For Respondent: AnaMarija Antic-Jezildzic, Specialist

K. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, A. Kwok (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$5,949.79 for the 2020 tax year.

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

ISSUE

Whether appellant has shown reasonable cause for the late filing of their return for the 2020 tax year.

FACTUAL FINDINGS

1. Appellant filed an untimely 2020 California resident income tax return on May 9, 2022.
2. On May 16, 2022, FTB issued a Notice of Tax Return Change – Revised Balance imposing a late-filing penalty of \$5,139.25, and applicable interest.
3. Appellant made payments on May 31, 2022, and August 21, 2022, satisfying the liability.
4. On August 15, 2022, appellant requested abatement of the late-filing penalty and interest, which FTB accepted as a claim for refund.¹

¹ Appellant now concedes to the imposition of interest. Accordingly, it will not be discussed further.

5. On December 19, 2022, FTB denied appellant's claim for refund, stating that appellant did not show reasonable cause for filing an untimely return.
6. This timely appeal followed.

DISCUSSION

R&TC section 19131 imposes a late-filing penalty where a taxpayer fails to timely file a return, unless the failure is due to reasonable cause and not willful neglect. The penalty is calculated at 5 percent of the tax liability for each month or fraction thereof the return is past due, up to a maximum of 25 percent. (R&TC, § 19131.) When FTB imposes a penalty, there is a rebuttable presumption that the penalty was properly imposed. (*Appeal of Xie*, 2018-OTA-076P.)

On appeal, appellant asserts that they timely prepared and filed their return electronically on May 16, 2021.² However, appellant asserts that for an unknown reason, the tax software labeled the return as "Other." Appellant asserts that they emailed the tax software company and received a response on May 17, 2021, that the return was accepted.³ As a result, appellant believed that their return was filed. Appellant contends that they did not discover that the return was unfiled until April 2022, when appellant reviewed their bank account and realized that tax payments had not been withdrawn. Appellant states that they re-filed the return upon discovering the error.⁴

Here, appellant's return was due on or before May 17, 2021. However, FTB did not receive the return until May 9, 2022, well after the due date. As such, FTB properly imposed the late-filing penalty. Appellant contends that they relied on correspondence from the tax software

² Appellant's 2020 tax return had an original due date of April 15, 2021. Due to the COVID-19 pandemic, FTB postponed the filing due date to May 17, 2021. (See <https://www.ftb.ca.gov/about-ftb/newsroom/2020-tax-year-extension-to-file-and-pay-individual.html>.)

³ By email dated May 17, 2021, a tax software representative indicates that appellant's return was accepted by the IRS.

⁴ Appellant also asserts that the IRS abated a federal late-filing penalty for the same year. Despite this contention, appellant has not provided evidence that the federal abatement of the late-filing penalty was based on a showing of reasonable cause. OTA notes that a federal late-payment penalty for the same year was abated for reasonable cause. However, without further evidence, OTA cannot conclude that the federal late-filing penalty was abated for the same reason. Appellant's claim for refund also appeared to request abatement of the penalties based on their prior good filing history. R&TC section 19132.5 allows for the abatement of an individual's first-time timeliness penalties. However, that section only applies to tax years beginning on or after January 1, 2022. (R&TC, § 19132.5(a)(1), (f).)

company to verify that the returns were timely filed. However, a taxpayer's reliance on a tax preparer or agent to timely pay tax does not constitute reasonable cause. (See *Appeal of Quality Tax & Financial Services, Inc.* 2018-OTA-130P; see also *U.S. v. Boyle* (1985) 469 U.S. 241, 249-251.) The fact that a tax preparer was expected to attend to a matter does not relieve a taxpayer of the duty to comply with the statute, and an agent's failure to file a tax return cannot constitute reasonable cause for the taxpayer. (*Appeal of Fisher*, 2022-OTA-337P.) This rule also applies in electronic filing cases. (*Ibid.*)

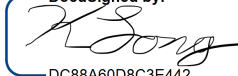
Appellant provided an email showing that the tax software company filed the return, and a printout showing that appellant's California return was submitted to FTB on May 15, 2021. The email correspondence appellant provided from the tax software company indicates that the IRS accepted appellant's federal income tax return, but does not mention appellant's California return. Appellant has not provided documentation showing that FTB accepted the return. In the absence of an acknowledgment that a return was transmitted, received, or accepted, an ordinarily prudent person would have reviewed their e-filing history and acknowledgment records for the return to confirm whether the return had been transmitted, received, and accepted. (*Appeal of Auburn Old Town Gallery, LLC*, 2019-OTA-319P, citing *Appeal of Quality Tax & Financial Services, Inc.*, *supra.*) While OTA is sympathetic to appellant's situation, longstanding precedent compels OTA to conclude that appellant has not shown reasonable cause for the late filing of their return for the 2020 tax year.

HOLDINGS

Appellant has not shown reasonable cause for the late filing of their return for the 2020 tax year.


DISPOSITION

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

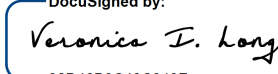
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Keith T. Long
Administrative Law Judge

We concur:

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Suzanne B. Brown
Administrative Law Judge

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Veronica I. Long
Administrative Law Judge

Date Issued: 11/27/2023