

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 230513313
A. GANDI)
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OPINION

Representing the Parties:

For Appellant: A. Gandi
For Respondent: Noel Garcia-Rosenblum, Attorney
Topher Tuttle, Attorney

J. ALDRICH, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, A. Gandi (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$2,053 for the 2020 tax 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.)

Office of Tax Appeals Administrative Law Judge Josh Aldrich held an oral hearing for this matter electronically on January 24, 2024. At the conclusion of the hearing, the record was closed and this matter was submitted for an Opinion.

ISSUE

Whether the late-filing penalty should be abated for reasonable cause.¹

¹ In his request for appeal appellant contested the estimated tax penalty of \$40. During the oral hearing, appellant clarified that that the only issue was the late-filing penalty.

FACTUAL FINDINGS

1. Appellant hired a CPA to prepare and file his 2020 California Resident Income Tax Return (return).
2. On October 15, 2021, appellant made an e-payment of \$11,000.
3. The CPA untimely filed the return on October 27, 2021.
4. FTB issued a Notice of Tax Return Change, which imposed a late-filing penalty of \$2,053 and an estimated tax penalty of \$40.
5. Appellant timely filed a refund claim.
6. FTB denied appellant's refund claim because it determined that the information appellant provided did not constitute reasonable cause for waiving the late-filing penalty.
7. This timely appeal followed.

DISCUSSION

Absent an extension, personal income taxpayers who file on a calendar year basis are generally required to file their returns by April 15 of the following year. (R&TC, § 18566.) Taxpayers may file their return on or before the automatic extended due date, which is six months after the original filing due date. (R&TC, § 18567; Cal. Code Regs., tit. 18, § 18567.) However, if the return is not filed within six months of the original due date, no extension is allowed. (Cal. Code Regs., tit. 18, § 18567(a).)²

R&TC section 19131(a) imposes a late-filing penalty when a taxpayer fails to file a return by either the due date or the extended due date unless it is shown that the failure was due to reasonable cause and not willful neglect. When FTB imposes a late-filing penalty, the law presumes that the penalty was properly imposed, and the burden of proof is on the taxpayer to show reasonable cause for the late filing of the return. (*Appeal of Cremel and Koepfel*, 2021 OTA-222P.) To establish reasonable cause, the taxpayer must provide credible and competent

² In response to COVID-19, pursuant to R&TC section 18572(b), FTB postponed to May 17, 2021, the 2020 individual tax filing and payment due dates. (See <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2021-03-state-tax-deadline-for-individuals-postponed-until-may-17-2021.html>.) FTB's postponement did not change the original due date for 2020 returns, upon which the automatic six-month extension to file was based, and the extension expired on October 15, 2021. (*Appeal of Bannon*, 2023-OTA-096P.)

evidence establishing that the failure to timely file a return occurred despite the exercise of ordinary business care and prudence. (*Ibid.*)

Each taxpayer has a personal, non-delegable obligation to file a tax return by the due date. (*United States v. Boyle* (1985) 469 U.S. 241, 252 (*Boyle*)). A taxpayer may reasonably rely on an accountant or attorney for substantive advice on a matter of tax law, such as whether a liability exists. (*Ibid.*) Reliance on an agent to timely file a tax return, however, is not reliance on substantive advice because one does not have to be a tax expert to know that tax returns have fixed filing dates. (*Ibid.*) A taxpayer's reliance on an agent to timely file a tax return, including an electronically filed return, does not constitute reasonable cause for the late filing of a return. (*Ibid*; *Appeal of Fisher*, 2022-OTA-337P (*Fisher*)).

Appellant contends that the late-filing penalty should be abated for reasonable cause because he relied on the CPA to timely file the return. Appellant makes several arguments in support. Appellant argues that he first became aware that the CPA had filed his return late when he received the Notice of Tax Return Change. Appellant asserts that his return was more complicated than in the past because of substantial capital gains and this was the first year that he had a "trader tax status and a 'Mark to Market Election'" which complicated his return beyond his layman understanding of the tax code. Further, appellant argues that this was during the COVID-19 pandemic, and the IRS waived late-filing fees for millions of U.S. taxpayers. Appellant also argues that he could not submit his return on his own because he had provided the necessary source documents to his CPA.

Appellant's return was untimely filed on October 27, 2021, when it was due on May 17, 2021. Appellant does not dispute the calculation of the late-filing penalty, and FTB has not alleged willful neglect; therefore, the only issue is whether there is reasonable cause for the failure to timely file the return. The law is clear: the fact that appellant's agent, the CPA, was expected to file the return by the extended deadline does not relieve appellant of his duty or obligation, and an agent's failure to file a tax return cannot constitute reasonable cause for appellant. (*Boyle, supra*, at p. 252; *Fisher, supra*.) Although appellant's return may have been more complicated than prior years, the relevant action here is meeting the statutory deadline to file a return, not preparing it; therefore, this argument lacks merit. Regarding the IRS's waiver of late-filing fees for the 2020 tax year, FTB and the IRS operate under different code sections as well as other governing authorities. Further, appellant has not shown that the IRS abated his

federal 2020 late-filing penalty, if applicable, for reasonable cause and not by administrative waiver.³ With respect to the availability of the necessary source documents, a reasonably prudent businessperson would have retained copies of those documents. (See *Appeal of Xie*, 2018-OTA-076P.) In addition, much of the evidence submitted by appellant addresses communications or actions after the filing deadline had passed. Other than hiring a CPA, the evidentiary record is largely absent of any actions that appellant took prior to the filing deadline. Based on the foregoing, appellant has not shown reasonable cause to abate the late-filing penalty.

HOLDING

The late-filing penalty should not be abated for reasonable cause.

DISPOSITION

FTB's action is sustained in full.

DocuSigned by:

Josh Aldrich

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Josh Aldrich

Administrative Law Judge

Date Issued: 3/27/2024

³ Appellant's claim for refund also appears to request abatement of the penalty based on his 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).)