

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 230312913
J. ONO AND)
A. ONO)
_____)

OPINION

Representing the Parties:

For Appellants: J. and A. Ono

For Respondent: Paige Chang, Attorney

A. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. Ono and A. Ono (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$6,594.99¹ for the 2021 tax year.

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

ISSUE²

Whether appellants have established reasonable cause to abate the late filing penalty.

FACTUAL FINDINGS

1. Sometime during 2021, appellants moved from Hawaii to California.
2. A. Ono worked remotely for a company located in Hawaii during 2021.

¹ This is the amount reflected on FTB’s claim denial notice. Appellants assert that the amount at issue in this appeal is actually \$8,174.64, not the \$6,594.99 reflected in FTB’s claim denial notice. Appellants contend that subsequent to filing this appeal, FTB assessed an additional late filing penalty of \$1,464 and additional interest of \$117.65 on a subsequent Notice of Tax Return Change – Refund (i.e., \$6,594.99 + \$1,464 + \$117.65). However, FTB’s Notice of Tax Return Change – Refund indicates that FTB reduced the late filing penalty to \$1,464 and reduced interest to \$117.65. On May 23, 2023, FTB refunded the difference to appellants. Accordingly, the remaining amount on appeal is \$1,581.65 (the revised late filing penalty of \$1,464 and the revised interest of \$117.65).

² Because appellants have not asserted any arguments for abating interest, interest will not be addressed separately here.

3. Appellants received a Form W-2, Wage and Tax Statement, from A. Ono's employer. The Form W-2 provided the following information: box 15 indicated A. Ono's employment state is listed as California and includes an employer's state ID number; box 16 indicated wages, tips, etc. of \$0; and box 17 indicated state income tax of \$0.
4. On April 15, 2022, FTB received an extension payment for 2021 of \$3,000 from appellants.
5. On October 26, 2022, appellants untimely filed a 2021 California Nonresident or Part-Year Resident Income Tax Return, reporting total tax of \$30,749 and withholdings of \$3,375 for a tax due of \$27,374. FTB received payment of \$27,374 from appellants on the same date.
6. FTB issued a Notice of Tax Return Change – Revised Balance, indicating the imposition of the late filing penalty of \$6,093.50 and interest of \$501.49, which totaled \$6,594.99. FTB also applied an extension payment of \$3,000 appellants made on April 15, 2022, but did not report on their return, resulting in a revised balanced due of \$3,594.99.
7. Appellants subsequently filed a claim for refund of \$6,594.99.³
8. On February 21, 2023, FTB sent another notice to appellants with a revised balance due of \$3,628.43 because of additional interest that accrued on appellants' late payment. On February 24, 2023, appellants made a payment of \$3,629.92, satisfying their 2021 account balance.
9. On March 15, 2023, FTB denied appellants' claim for refund.
10. At some point before filing the appeal, A. Ono received a corrected 2021 Form W-2, which revised box 15 from Hawaii to California, box 16 to a figure that would require a California taxpayer to file a return, and box 17 state income tax to \$12,513.65. All other information on the corrected 2021 Form W-2 remained unchanged.
11. On March 23, 2023, appellants filed this timely appeal.
12. On March 30, 2023, appellants filed an amended 2021 California Nonresident or Part-Year Resident Income Tax Return. Appellants' revisions resulted in a total tax of \$24,744 and withholdings of \$15,888.

³ FTB treated this as an informal claim for refund pursuant to R&TC section 19322.1, which was perfected when appellants subsequently paid the full balance due for the 2021 tax year.

13. Based on the amended return, which FTB accepted, FTB issued a new Notice of Tax Return Change – Refund. Based on the revised total tax of \$24,744 and revised withholdings of \$15,888, this notice indicates that FTB decreased the late filing penalty to \$1,464⁴ and decreased interest to \$117.65.
14. On May 23, 2023, FTB issued a refund of \$24,032.79.⁵

DISCUSSION

A taxpayer filing on a calendar year basis must file a return by April 15th following the close of the calendar year. (R&TC, § 18566.) Alternatively, a taxpayer may file a return for tax year 2021 on or before the automatic extended deadline of October 15, 2022. (R&TC, § 18567; Cal. Code Regs., tit. 18, § 18567.) Appellants untimely filed their 2021 California income tax return on October 26, 2022, after the extended deadline of October 15, 2022. R&TC section 19131 imposes a late filing penalty when a taxpayer fails to file a return on or before the deadline unless the taxpayer establishes that the late filing was due to reasonable cause and was not due to willful neglect. Therefore, FTB properly imposed a late filing penalty, and the issue on appeal is whether the penalty should be abated based on reasonable cause.

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 intelligent and prudent businessperson to have so acted under similar circumstances. (*Appeal of Head and Feliciano*, 2020-OTA-127P.) Asserted lack of documentation or difficulty in calculating a tax liability does not, by itself, constitute reasonable cause for a late payment of tax, or in this case, the late filing of a tax return. (*Appeal of Bannon*, 2023-OTA-096P.) A taxpayer's failure to receive an information return, such as a Form W-2, does not excuse a taxpayer from their duty to report the income on the return. (*Appeal of Moren*, 2019-OTA-176P.) A taxpayer is expected to timely file a return based on the best information available and then, if necessary, file an amended return when better information emerges. (*Appeal of Xie*, 2018-OTA-076P.)

⁴ (Total tax of \$24,744 – withholdings of \$15,888 – extension payment of \$3,000) x 25 percent late filing penalty = \$1,464.

⁵ This amount is computed as follows: appellants' total payments of \$49,891.92 (withholdings of \$15,888 + extension payment of \$3,000 + return payment of \$27,374 + bill payment of \$3,629.92) minus appellants revised liability for 2021 of \$26,325.65 (revised total tax of \$24,744 + revised late filing penalty of \$1,464 + revised interest charged of \$117.65) plus interest allowed of \$466.52. (\$49,891.92 - \$26,325.65 + \$466.52 = \$24,032.79.)

Appellants argue that they informed A. Ono's employer that their original Form W-2 was incorrect and, as such, they should not be penalized for making this correction. Appellants assert that when the extended October deadline neared for the 2021 tax year, they realized that the original Form W-2 did not correctly list A. Ono's California income, which caused a delay in the timely filing of their return. Appellants contend that if they had not found this error on their original Form W-2, they would have incorrectly received a refund⁶ and therefore they should not be punished for correcting this error. Although it is admirable that appellants received a corrected Form W-2 from A. Ono's employer at their behest, the law requires appellants to file their return timely with the best information available to them by the filing deadline. In addition, it appears that appellants filed their return with the incorrect Form W-2 information anyway, which undermines appellants' argument that their late filing was due to contacting A. Ono's employer for updated information. In fact, appellants filed an amended return using the information from the corrected Form W-2 in March 2023. The unavailability of information is not reasonable cause for the failure to timely file a return. (*Appeal of Xie, supra.*) Accordingly, appellants have not established reasonable cause.

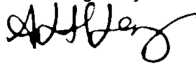
⁶ The record does not reflect that appellants would have been due a refund in this scenario.

HOLDING

Appellants have not established reasonable cause to abate the late filing penalty.

DISPOSITION

FTB’s action is sustained.

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Andrea L.H. Long
Administrative Law Judge

We concur:

DocuSigned by:

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Kenneth Gast
Administrative Law Judge

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Michael F. Geary
Administrative Law Judge

Date Issued: 4/10/2024