

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 230814003
A. MALEKSHAHI AND)
A. ASSMAR)
_____)

OPINION

Representing the Parties:

For Appellants: A. Malekshahi
For Respondent: Eric R. Brown, Attorney

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, A. Malekshahi and A. Assmar (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$3,573.50 for the 2020 taxable year.

Appellants 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.) Appellants waived the right to an oral hearing; therefore, the Office of Tax Appeals (OTA) decides the matter based on the written record.

ISSUE

Have appellants established reasonable cause to abate the late-filing penalty?¹

FACTUAL FINDINGS

1. Appellants filed a 2020 California Resident Income Tax Return late on October 23, 2021.
2. FTB imposed a late-filing penalty of \$3,330.75 plus applicable interest.
3. Appellants paid \$3,573.50 on February 11, 2022, satisfying the balance due (late-filing penalty plus interest).

¹ Appellants raise no arguments with respect to interest, and OTA does not address interest separately.

4. Appellants filed a claim for refund based on reasonable cause, which FTB denied.
5. This timely appeal followed.

DISCUSSION

California imposes a penalty for failure to file a return on or before the due date, unless it is shown that the failure is due to reasonable cause and not due to willful neglect. (R&TC, § 19131(a).) FTB's imposition of a penalty is presumed correct, and the burden of proof is on taxpayers to overcome the presumption by providing credible and competent evidence supporting a claim of reasonable cause. (*Appeal of Xie*, 2018-OTA-076P.) To establish reasonable cause to abate the late-filing penalty, taxpayers must show that the failure to timely file a return occurred despite the exercise of ordinary business care and prudence or that cause existed that would prompt an ordinarily intelligent and prudent businessperson to have so acted under similar circumstances. (*Appeal of Belcher*, 2021-OTA-284P.)

Here, appellants' 2020 tax return was due on May 17, 2021.² Appellants did not file their return until October 23, 2021, beyond the extended due date for the return. Thus, the late-filing penalty was properly imposed.

Appellants claim that they relied on their tax preparer to file in a timely manner that would not subject them to penalties. In support, appellants submitted a letter from their tax preparer indicating the late filing was due to appellants "being a new client and miscommunication." Appellants further assert that they have always paid their taxes on time, and the late payment was due to financial hardship caused by the COVID-19 pandemic.³ Appellants contend that the IRS abated penalties, and that FTB should do the same.

Taxpayers may reasonably rely on a tax professional for substantive advice on matters of tax law, such as whether a liability exists. (*U.S. v. Boyle* (1985) 469 U.S. 241, 251; *Appeal of Fisher*, 2022-OTA-337P.) However, taxpayers have a personal, non-delegable duty to file a tax

² In response to COVID-19, FTB postponed the 2020 taxable year due dates for individuals to file a return to May 17, 2021. (See <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2021-03-state-tax-deadline-for-individuals-postponed-until-may-17-2021.html>.) In addition, an automatic extension of six months is provided, dependent on the return being filed during the extension period, which sets an extended due date of October 15, 2021, for 2020 tax returns. (R&TC, § 18567; Cal. Code Regs., tit. 18, § 18567.) Appellants did not file their return within either of the postponed or extended filing deadlines.

³ Appellants did not pay their taxes until October 15, 2021, which is well past the due date of May 17, 2021, as postponed by FTB. A late-payment penalty was not imposed by FTB as that penalty is limited by the assessment of the late-filing penalty. (See R&TC, § 19132(b).)

return by the due date. (*Id.* at p. 252.) The Supreme Court established the bright-line rule that a taxpayer's reliance on an agent, such as an accountant, to file a return by the due date is not reasonable cause. (*Id.* at pp. 248-250)

Appellants have not shown what steps they took to ensure their 2020 tax return was filed by the due date or by the extended due date. The letter from their tax preparer does not address what steps appellants took to file their return on time. Their duty to ensure timely filing cannot reasonably be delegated to their tax preparer. Therefore, appellants have not established reasonable cause to abate the late-filing penalty.

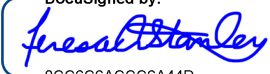
Appellants assert that the IRS abated timeliness penalties with respect to their 2020 taxable year, suggesting that FTB should do so as well. R&TC section 19132.5(a) allows a one-time abatement of timeliness penalties for taxable years beginning on or after January 1, 2022. As the 2020 taxable year is at issue here, this newly enacted law is inapplicable, and the late-filing penalty may not be abated on that basis.

HOLDING

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

DISPOSITION

FTB's action denying appellants' claim for refund is sustained.

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Teresa A. Stanley

Administrative Law Judge

Date Issued: 6/25/2024