

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 230513431
J. HICKINGBOTHAM IV AND)
J. HICKINGBOTHAM)
_____)

OPINION

Representing the Parties:

For Appellants: Francine Prophet, CPA
For Respondent: Josh Ricafort, Attorney
Maria Brosterhaus, Attorney Supervisor

J. LAMBERT, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. Hickingbotham IV and J. Hickingbotham (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$16,458.75 for the 2019 tax year.

Office of Tax Appeals (OTA) Administrative Law Judges Josh Lambert, Teresa A. Stanley, and John O. Johnson held an oral hearing for this matter electronically on June 19, 2024. At the conclusion of the hearing, OTA closed the record, and this matter was submitted for an opinion.

ISSUE

Whether appellants have established a basis to abate the late filing penalty.

FACTUAL FINDINGS

1. For the 2019 tax year, appellants made estimate payments of \$8,983 on April 15, 2019,¹ \$7,469 on September 15, 2019, and \$228 on October 28, 2019, totaling \$16,680.

¹ This payment was a transfer from the 2018 tax year.

2. On July 24, 2020, appellants made an extension payment of \$71,840, of which \$66,105 was applied to the 2019 tax year and \$5,735 was applied to the 2020 tax year.²
3. On February 12, 2021, appellants filed an untimely California Resident Income Tax Return (Form 540) for the 2019 tax year, reporting total tax of \$82,515, estimated tax and other payments of \$88,292 and overpaid tax of \$5,777.
4. On August 2, 2021, FTB issued a Notice of Tax Return Change – Revised Balance, which imposed a late filing penalty of \$16,458.75, plus interest.³
5. Appellants paid the amount due and filed a claim for refund of the late filing penalty, which FTB denied.
6. This timely appeal followed.

DISCUSSION

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).) The penalty is computed at 5 percent of the amount of tax required to be shown on the return for every month that the return is late, up to a maximum of 25 percent. (R&TC, § 19131(a).) For purposes of R&TC section 19131, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return. (R&TC, § 19131(c).)

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 such 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.*)

Appellants argue that the late filing penalty should not be imposed because they overpaid their taxes. Appellants point to their Exhibit A, which is an explanation of the late filing penalty

² Appellants requested that \$5,735 be applied to the 2020 tax year on their 2019 tax return. The payment was applied to their 2019 tax return effective on the date of the payment, July 24, 2020.

³ The notice also imposed an underpayment of estimated tax penalty, which is not in dispute. Appellants also self-assessed an underpayment of estimated tax penalty on their return.

on FTB's website stating: "There is no penalty for filing a late return after the tax deadline if a refund is due."

The due date for appellants to file their 2019 return and pay tax was July 15, 2020.⁴ There is no dispute that appellants untimely filed their return on February 12, 2021. As to the calculation of the late filing penalty, the amount of tax required to be shown on the return was \$82,515. FTB reduced this amount by payments made on or before the due date of July 15, 2020. Pursuant to R&TC section 19131(c), the payments of \$16,680 are not included in the calculation for computing the late filing penalty. This is consistent with the explanation on FTB's website as provided by appellants as Exhibit A, which also states that the late filing penalty is calculated "[a]fter applying any payments and credits made, on or before the original due date of your tax return. . . ."

The result of reducing the tax of \$82,515 by timely payments of \$16,680 is \$65,835, and the remaining tax was untimely paid on July 24, 2020. Therefore, the amount of tax required to be shown on the return for purposes of calculating the late filing penalty is \$65,835. The penalty is computed at 5 percent of the amount of tax required to be shown on the return, or \$65,835 in this case, for every month that the return is late, up to a maximum of 25 percent. (See R&TC, § 19131(a).) Appellants filed their return more than five months late, so the penalty was correctly calculated as \$16,458.75, which is 25 percent of \$65,835.

Appellants contend that they faced difficulties arising from the COVID-19 pandemic. Appellants do not provide any evidence or explanation as to why they could not timely file due to the pandemic. In addition, FTB already postponed the due date for their 2019 tax return in response to the pandemic.⁵

Appellants also contend that their tax preparer was unable to withdraw money from their account and make electronic payments because the postponed due date of July 15, 2020, caused a software error. Furthermore, appellants assert that their tax preparer called FTB and was told that FTB's software could not handle July 15 extension payments. Appellants do not provide any evidence to support these contentions. In addition, appellants' arguments relate to the late payment of tax, whereas the issue in this appeal is the late filing penalty. Appellants do not

⁴ Due to the COVID-19 pandemic, FTB postponed the filing and payment due dates for the 2019 tax year to July 15, 2020. (See <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2020-3-state-postpones-tax-deadlines-until-july-15-due-to-the-covid-19-pandemic.html>.)

⁵ See footnote 4.

provide evidence or argument to show why they failed to timely file their return. Furthermore, appellants' explanations do not establish error in the calculation of the late filing penalty. Therefore, appellants have not shown the penalty was improperly calculated or reasonable cause for the late filing of their return.

HOLDING

Appellants have not established a basis to abate the late filing penalty.

DISPOSITION

FTB's action is sustained.

Signed by:
Josh Lambert
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Josh Lambert
Administrative Law Judge

We concur:

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Teresa A. Stanley
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Teresa A. Stanley
Administrative Law Judge

DocuSigned by:
John O. Johnson
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John O. Johnson
Administrative Law Judge

Date Issued: 8/28/2024