

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 230513328
D. SHERAZI)
)
)
)
)

OPINION

Representing the Parties:

For Appellant: D. Sherazi
For Respondent: Vivian Ho, Attorney
For Office of Tax Appeals: Rachel H. Glass, Graduate Student Assistant
S. ELSOM, Hearing Officer: Pursuant to Revenue and Taxation Code (R&TC)

section 19324, D. Sherazi (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$1,153.75¹ for taxable year 2021.

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

ISSUE

Has appellant established reasonable cause to abate the late-filing penalty?

FACTUAL FINDINGS

1. On October 17, 2022, appellant made a \$5,065 payment for the 2021 tax year but did not file a 2021 California income tax return.
2. On October 26, 2022, appellant untimely filed a 2021 California Resident Income Tax Return reporting total tax of \$4,615, and self-assessed interest, late-filing penalties, and/or late-payment penalties totaling \$517.

¹ Appellant filed a claim for refund requesting a refund of the late-filing penalty, which respondent denied. While appellant indicated the incorrect amount of \$795.86 for the penalty on his claim for refund, appellant filed this appeal stating the correct penalty amount of \$1,153.75, which is the amount at issue.

3. Respondent processed appellant's 2021 return and sent appellant a Notice of Tax Return Change Revised Balance (Notice), imposing a late-filing penalty of \$1,153.75 plus applicable interest.
4. Appellant subsequently paid the outstanding balance due of \$795.86 and filed a claim for refund asserting reasonable cause to abate the late-filing penalty.
5. Respondent denied appellant's claim for refund.
6. This timely appeal followed.

DISCUSSION

California imposes a penalty for failing to file a return on or before the due date unless the taxpayer shows that the failure is due to reasonable cause and not due to willful neglect. (R&TC, § 19131.) When respondent imposes a penalty, it is presumed to have been imposed correctly. (*Appeal of Mauritzson*, 2021-OTA-198P.) A taxpayer may rebut this presumption by providing credible and competent evidence supporting abatement of the penalty for reasonable cause. (*Ibid.*) 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 prudent businessperson to have so acted under similar circumstances. (*Ibid.*)

The United States Supreme Court has held that reliance on a tax preparer to meet a tax deadline does not establish reasonable cause, unless such reliance involves substantive matters of tax law. (*U.S. v. Boyle* (1985) 469 U.S. 250 (*Boyle*.) However, reliance on a tax advisor to timely file a tax return 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. (*Id.* at p. 251.) California follows *Boyle* in that a taxpayer's reliance on a tax adviser must involve reliance on substantive tax advice and not on simple clerical duties. (*Appeal of Mauritzson*, *supra.*) The law is clear: 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.)

In his claim for refund, appellant asserts that he was going to file his 2021 return before "[t]he deadline in April," but his accountant told appellant "[w]e can move the deadline to October". Appellant asserts that had he known of penalties associated with filing his return on an extension, he would have paid the total tax due by the return's original due date. Appellant

further asserts that he relied on his accountant to file his 2021 tax return and did not know the accountant failed to file the tax return by the extended due date. On appeal, appellant argues that appellant's parents' claims for refund requests were honored and, because all three used the same accountant, appellant hopes OTA can similarly honor the refund request at issue.

Appellant appears to be mistaken regarding the extended deadline to file a California personal income tax return and the imposition of the late-filing penalty. California Code of Regulations, title 18, section 18567(a) provides an automatic extension to file a personal income tax return to October 15. The extension to file does not apply to payments, which are due on the original due date of the return without regard to an extension to file. (R&TC § 18567(b).) The late-filing penalty is imposed when a return is filed after the extended due date, and it is calculated in part based upon the amount and date of the tax payment.² Thus, appellant's untimely filing of his 2021 tax return on October 26, 2022, and late payment of tax resulted in the proper imposition and calculation of the late-filing penalty. Appellant does not dispute the imposition or calculation of the late-filing penalty, but instead asserts reasonable cause for abatement of it.

Appellant's assertion that the late filing was due to his accountant's delay does not constitute reasonable cause for abatement of the late-filing penalty. Appellant's reliance on his accountant to provide the correct filing date or to timely file his return by the extended filing deadline is not substantive advice. (*Boyle, supra.*) Reliance on an expert cannot function as a substitute for compliance with an unambiguous tax statute which defines the filing due date for appellant's return. (*Ibid.*) In this case, appellant's misunderstanding of the law generally does not excuse his late filing of the 2021 return. (*Appeal of GEF Operating, Inc., 2020-OTA-057P.*) Though appellant asserts that he would have paid his 2021 balance due by the original return due date had he understood the penalties associated with late filing, as discussed above, such payments affect only the calculation of the late-filing penalty, not the imposition of it.

² R&TC section 19131(a) provides that the late-filing penalty is calculated at 5 percent of the tax reported for each month or fraction of each month the return is late, with a maximum penalty of 25 percent of the tax reported. R&TC section 19131(c) provides that tax required to be shown on the return shall be reduced by the amount of tax which is paid on or before the date prescribed for the payment of tax.


Finally, the circumstances of one taxpayer cannot be applied to the circumstances of another; therefore, OTA cannot honor appellant’s refund request solely on the grounds that FTB abated the same penalties for his parents.³ Despite appellant’s misunderstanding, longstanding precedent compels OTA to conclude that appellant has not established reasonable cause for the late filing of his return for the 2021 taxable year.

HOLDING


Appellant has not established reasonable cause to abate the late-filing penalty.


DISPOSITION

Respondent’s action denying appellant’s claim for refund is sustained.

Signed by:

C04CD432E3254FD...
Seth Elsom
Hearing Officer

We concur:

DocuSigned by:

67F043D83EF647C...
Sheriene Anne Ridenour
Administrative Law Judge

DocuSigned by:

873D9797B9E64E1...
John O. Johnson
Administrative Law Judge

Date Issued: 8/21/2024

³ To the extent appellant seeks an abatement based on a good filing history, OTA notes that R&TC section 19132.5 allows abatement of certain timeliness penalties under certain circumstances; however, that statute only applies to taxable years beginning on or after January 1, 2022.