

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 231114713
A. ARUN AND)
M. SUBRAMANI)
_____)

OPINION

Representing the Parties:

For Appellants: Eugene Ruvere, Representative

For Respondent: Paige Chang, Attorney

For Office of Tax Appeals: Juan Quezada, Graduate Student Assistant

K. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, A. Arun and M. Subramani (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants' claim for refund of \$16,590.50 for the 2021 tax year.

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

ISSUE

Whether appellants have established reasonable cause for the late filing of their 2021 California income tax return.

FACTUAL FINDINGS

1. Appellants filed an untimely 2021 California Resident Income Tax Return on October 27, 2022. After applying withholding credits of \$168,972, appellants reported a tax balance due of \$62,986. Appellants also self-assessed penalties and interest, including an underpayment of estimated tax penalty (estimated tax penalty) of \$844. FTB did not receive a payment with the return.

2. On November 21, 2022, FTB issued appellants a State Income Tax Balance Due Notice imposing a late filing penalty of \$15,746.50 and an estimated tax penalty of \$844, plus applicable interest.
3. On November 28, 2022, and May 31, 2023, FTB received payments totaling \$81,814.43, which satisfied the liability.
4. On March 15, 2023, appellants filed a Reasonable Cause – Individual and Fiduciary Claim for Refund claiming a refund of penalties totaling \$16,590.50.¹
5. On August 10, 2023, FTB issued a Notice of Action of the Franchise Tax Board Upon Taxpayer’s Claim for Refund denying appellants’ claim for refund.²
6. Appellants timely filed this appeal.

DISCUSSION

Issue 1: Whether appellants have established reasonable cause for the late filing of their 2021 California income tax return.

FTB imposes a late filing penalty on a taxpayer who 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. (R&TC, § 19131.) 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 ordinary intelligent and prudent businessperson to have so acted under similar circumstances. (*Appeal of Head and Feliciano*, 2020-OTA-127P.)

When FTB imposes a penalty, there is a rebuttable presumption that the penalty was properly imposed. (*Appeal of Xie*, 2018-OTA-076P.) The burden of proof is on the taxpayer to show that reasonable cause exists to support abatement of the late filing penalty. (*Ibid.*) To

¹ Appellants’ claim for refund included a request for abatement of the estimated tax penalty. On appeal appellants have not raised any contentions with respect to the estimated tax penalty. Instead, appellants contend that there is reasonable cause for the failure to file a timely return based on appellants’ reliance on a tax preparer to make a timely filing. Reasonable cause is not a basis for relief from the estimated tax penalty. (*Appeal of Saltzman*, 2019-OTA-070P.) As such, OTA does not consider the estimated tax penalty to be in dispute and will not discuss it further.

² Prior to issuing the Notice of Action, FTB issued a Penalty Waiver Denial on March 27, 2023, which denied appellants’ request for penalty relief. The Penalty Waiver Denial noted that as of March 27, 2023, appellants had a balance due in the amount of \$16,514.66. FTB issued the Notice of Action denying appellants’ claim for refund after appellants’ final payment on May 31, 2023.

overcome the presumption of correctness that attaches to the penalty, a taxpayer must provide credible and competent evidence supporting a claim of reasonable cause, otherwise, the penalty cannot be abated. (*Ibid.*)

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.) However, reasonable cause may be found when a taxpayer relies on substantive advice from an accountant or attorney on a matter of tax law, such as whether liability exists. (*U.S. v. Boyle* (1985), 469 U.S. 241, 251 (*Boyle*)). California follows *Boyle* in that a taxpayer's reliance on a tax adviser must involve reliance on substantive tax advice and not simple clerical duties. (*Appeal of Mauritzon*, 2021-OTA-198P.)

Here, appellants filed their return on October 27, 2022, which is after the six-month filing extension due date of October 15, 2022. As a result, FTB properly imposed the late filing penalty. However, appellants argue that there is reasonable cause for the late filing of their return. Appellants assert that they relied on their accountant to prepare and electronically submit their tax returns. Appellants argue that this was the first time both parties worked together, and the tax return was completed on October 14, 2022. Appellants contend that once they realized the amount of tax due was not debited from their bank account, immediate steps were taken to correct the matter by resubmitting the return, 12 days after the due date. Appellants maintain that the failure to file a timely return was not the result of carelessness, reckless indifference, or intentional failure.

However, reliance on a tax professional to timely file their return does not constitute reasonable cause. (*Appeal of Fisher, supra.*) Appellants do not assert, and the Office of Tax Appeals (OTA) does not find, any evidence that appellants relied on a tax professional for substantive advice. Instead, the record indicates that the failure to make a timely filing was due to a clerical error by appellants' accountant. Furthermore, California does not allow first time abatement of the late filing penalty for the 2021 tax year.³ Accordingly, OTA finds no basis to abate the late filing penalty based on appellants' reliance on their accountant.

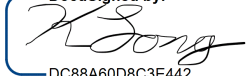
³ R&TC section 19132.5 authorizes first-time abatement of certain California income tax penalties for certain qualified individual filers, but its application is limited to tax years beginning on and after January 1, 2022, which is not applicable to this appeal.

HOLDING

Appellants have not shown reasonable cause for the late filing of their 2021 California income tax return.

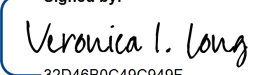
DISPOSITION

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

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Keith T. Long
Administrative Law Judge

We concur:

Signed by:

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Veronica I. Long
Administrative Law Judge

Signed by:

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Seth Elsom
Hearing Officer

Date Issued: 10/2/2024