

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 230613663
J. JONES)
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OPINION

Representing the Parties:

For Appellant: Patrick Vernoy, Tax Appeals Assistance Program (TAAP)¹

For Respondent: Brad J. Coutinho, Attorney Supervisor

For Office of Tax Appeals: Louis Ambrose, Attorney

S. HOSEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. Jones (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$14,381.50 for the 2021 tax year.

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

ISSUE

Whether appellant has shown reasonable cause for the late filing of his 2021 tax return.

FACTUAL FINDINGS

1. Appellant untimely filed a 2021 California Nonresident Income Tax Return (Form 540NR) on November 26, 2022. Appellant reported total tax of \$76,733, total payments of \$83,529, and an overpayment of \$6,796, and requested a refund of \$6,719.²

¹ Appellant filed his opening brief. Patrick Vernoy of TAAP filed appellant’s reply brief.

² Appellant also self-assessed a \$77 underpayment of estimated tax penalty.

2. FTB imposed a late filing penalty of \$14,381.50 and issued appellant a Notice of Tax Return Change – Revised Balance dated December 5, 2022, informing appellant of the changes and the revised balance due of \$7,836.72.
3. Appellant paid the balance due and filed a claim for refund on January 6, 2023. FTB denied the claim for refund because appellant failed to show reasonable cause for the late filing of the return.
4. Appellant filed this timely appeal.

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.) The late filing penalty is calculated at 5 percent of the tax due for each month or fraction of each month the return is late, with a maximum penalty of 25 percent of the tax due. (R&TC, § 19131(a).) When FTB imposes a penalty, it is presumed to have been imposed correctly. (*Appeal of Xie*, 2018-OTA-076P.) Appellant filed his return late on November 26, 2022, after the original due date of April 15, 2022, and after the extended due date of October 15, 2022. Therefore, FTB properly imposed the late filing penalty.

A taxpayer may rebut the presumption of correctness attached to the penalty by providing credible and competent evidence supporting abatement of the penalty for reasonable cause. (*Appeal of Xie, supra.*) 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.)

It is well established that each taxpayer has a personal, non-delegable obligation to ensure the timely filing of a tax return, and thus, reliance on an agent to perform this act does not constitute reasonable cause to abate a late filing penalty. (*U.S. v. Boyle* (1985) 469 U.S. 241, 251-252 (*Boyle*); *Appeal of Quality Tax & Financial Services, Inc.*, 2018-OTA-130P.)

To establish that reasonable cause exists under *Boyle*, a taxpayer must show that he or she reasonably relied on a tax professional for substantive tax advice as to whether a tax liability exists and that the following conditions are met: (1) the person relied on by the taxpayer is a tax professional with competency in the subject tax law; and (2) the tax professional's advice is based on the taxpayer's full disclosure of relevant facts and documents. (*Boyle, supra*; *Appeal of*

Summit Hosting, LLC, 2021-OTA-216P.) By contrast, reliance on an expert cannot function as a substitute for compliance with an unambiguous statute. (*Boyle, supra*, at p. 251.)

In the appeal letter, appellant contends that he relied on his tax preparer to file the 2021 tax return, stating that the tax preparer did not file the return by the extended filing due date, even though appellant provided all documentation at least four days prior to the extended deadline. Appellant maintains that he reasonably relied on his tax preparer, who had competency in the subject tax law, for substantive tax advice and that he made full disclosure of relevant facts and documents to the tax preparer.

However, the evidence provided by appellant does not show that his tax preparer provided advice on a *substantive* matter of law. Rather, the emails from his tax preparer ask appellant about an extension to file (and pay). Even if appellant's tax preparer misled appellant regarding filing, "[i]t requires no special training or effort to ascertain a deadline and make sure that it is met. The failure to make a timely filing of a tax return is not excused by the taxpayer's reliance on an agent, and such reliance is not 'reasonable cause'" (*Boyle, supra*, at p. 252.) The fact that appellant relied on his tax preparer to file his return does not relieve him of his responsibility to ensure that it is timely filed. (*Appeal of Fisher*, 2022-OTA-337P.) Moreover, the exercise of ordinary business care and prudence required appellant to do more than merely perform and/or delegate the tasks necessary to timely file the return; it also required appellant to personally verify the return had been successfully transmitted, and when it had not been, to take appropriate corrective action. (*Ibid.*; *Appeal of Quality Tax & Financial Services, Inc., supra*.) Appellant has not provided sufficient evidence to meet the burden to establish reasonable cause for abating the late filing penalty.

HOLDING

Appellant has not shown reasonable cause for the late filing of his 2021 tax return.

DISPOSITION

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

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Sara A Hosey
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Sara A. Hosey
Administrative Law Judge

We concur:

DocuSigned by:
Huy "Mike" Le
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Huy "Mike" Le
Administrative Law Judge

DocuSigned by:
Asaf Kletter
D17AEDDCAAB045B...

Asaf Kletter
Administrative Law Judge

Date Issued: 10/18/2024