

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)	OTA Case No. 231114798
A. CROUCH JR. AND)	
W. CROUCH)	
)	
)	

OPINION

Representing the Parties:

For Appellants:	Chelsea Monk, EA
For Respondent:	Ariana Macedo, Graduate Legal Assistant

J. LAMBERT, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, A. Crouch Jr. and W. Crouch (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants' claim for refund of \$6,505.75 for the 2021 tax year.¹

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

ISSUE

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

FACTUAL FINDINGS

1. On June 1, 2023, appellants untimely filed a California Resident Income Tax Return for the 2021 tax year.

¹ This amount consists of a late filing penalty.

2. Because appellants did not file their return by the April 18, 2022 due date,² FTB imposed a late filing penalty of \$6,505.75, plus interest.
3. Appellants paid the amount due and filed a claim for refund, which FTB denied.
4. This timely appeal followed.

DISCUSSION

R&TC section 19131 imposes a late filing penalty on taxpayers who fail 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. To establish reasonable cause, taxpayers 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 GEF Operating, Inc.*, 2020-OTA-057P.)

Appellants do not dispute the imposition or computation of the late filing penalty. Rather, appellants contend they have reasonable cause for the late filing because in the fall of 2022, their tax preparer ceased business operations due to difficulties resulting from the COVID-19 pandemic. Appellants contend that the tax preparer stopped responding to them and, as a result, they had to find a new tax preparer. Appellants provide emails to the tax preparer around the October extension deadline to show they requested an appointment to discuss their tax return preparation.

Taxpayers have a personal, non-delegable obligation to file a tax return by the due date. (*United States v. Boyle* (1985) 469 U.S. 241, 252.) Reasonable cause may exist when taxpayers reasonably rely on a tax professional for substantive tax advice, and the following conditions are met: (1) the person relied on by the taxpayer is a tax professional with competency in the subject of tax law; and (2) the tax professional's advice is based on the taxpayer's full disclosure of the relevant facts and documents. (*Appeal of Summit Hosting LLC*, 2021-OTA-216P.)

Appellants had a personal, nondelegable obligation to timely file, and they provide no argument or evidence to show that they relied on substantive tax advice from their tax preparer. Therefore, appellants have not established reasonable cause for failing to timely file based on

² The return due date for individuals filing on a calendar year basis is the 15th day of April following the close of the calendar year. (R&TC, § 18566.) However, Friday, April 15, 2022, was a federal holiday and therefore returns received on the following Monday, April 18, 2022, are considered by FTB to be timely filed. Therefore, the due date for payment of tax was April 18, 2022. (See R&TC, § 19001.)

reliance on their tax preparer. Appellants have also not shown that they exercised ordinary business care and prudence by taking steps to ensure that their return was timely filed, such as by timely retaining another tax preparer to prepare their return after their tax preparer failed to respond to their communications.

Appellants also assert that they did not have the tax knowledge to prepare the return without the assistance of a tax preparer. Appellants do not specifically explain or provide evidence establishing the complexities of their tax preparation process, and it is well settled that general difficulties in making computations or determining taxable income with exactitude does not constitute reasonable cause for filing late. (*Appeal of Xie*, 2018-OTA-076P.) Appellants also assert that their tax preparer did not return their tax preparation documents. Appellants do not provide evidence in support of this contention, and difficulties in obtaining information does not constitute reasonable cause for the late filing of a return. (*Ibid.*) Taxpayers have an obligation to file timely returns with the best available information, and to then subsequently file an amended return, if necessary. (*Ibid.*)

Appellants also contend they have reasonable cause for filing late because of difficulties related to their real estate business during the COVID-19 pandemic, difficulties related to moving to a new home, a loss suffered due to a Ponzi scheme, and involvement in legal actions related to the Ponzi scheme.³ Illness or other personal difficulties may be considered reasonable cause if the taxpayers present credible and competent proof that they were continuously prevented from filing a tax return. (*Appeal of Head and Feliciano*, 2020-OTA-127P.) However, if the difficulties simply caused the taxpayers to sacrifice the timeliness of one aspect of their affairs to pursue other aspects, the taxpayers must bear the consequences of that choice. (*Ibid.*) The taxpayers' selective inability to perform tax obligations, while participating in regular business activities, does not establish reasonable cause. (*Ibid.*)

Appellants do not provide evidence establishing that such difficulties prevented them from timely filing their return. The evidence shows that appellants were able to participate in other business activities and sacrificed the timeliness of filing their return to pursue those activities, which does not establish reasonable cause for untimely filing their return.


³ Appellants contend that they could not timely file due to various disasters in Los Angeles County. However, appellants provide no evidence that the disasters prevented them from timely filing or that they are eligible for postponements that FTB provided in relation to those affected by disasters in Los Angeles County.

HOLDING

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

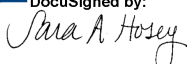
DISPOSITION

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


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Josh Lambert
Administrative Law Judge

We concur:

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Sara A. Hosey
Administrative Law Judge

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Asaf Kletter
Administrative Law Judge

Date Issued: 7/26/2024