

3. Appellants filed a refund claim for the late filing penalty on reasonable cause grounds, which respondent denied.

DISCUSSION

A late filing penalty shall be imposed when a taxpayer fails to file a tax return by either the due date or the extended due date, unless the taxpayer establishes that the late filing was due to reasonable cause and not due to willful neglect. (R&TC, § 19131(a).) The late filing penalty is calculated at 5 percent of the tax, for each month or a fraction thereof, that the return is late, with a maximum penalty of 25 percent of the tax. (*Ibid.*) When respondent imposes a penalty, the law presumes that the penalty was imposed correctly. (*Appeal of Xie*, 2018-OTA-076P.) The taxpayer bears the burden of proving that reasonable cause exists to support an abatement of the penalty. (*Ibid.*; *Appeal of Wright Capital Holdings LLC*, 2019-OTA-219P; *Appeal of Triple Crown Baseball LLC*, 2019-OTA-025P.) To establish reasonable cause, the taxpayer must show that the failure to file timely returns 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.) Unsupported assertions are insufficient to satisfy the taxpayer's burden. (*Appeal of Wright Capital Holdings LLC*, *supra.*)

Appellants contend that their CPA filed their form 540 NR late despite their timely authorization to do so; appellants also assert that, in retaliation for his firing, their CPA filed an unauthorized amended 2020 federal income tax return (Form 1040) on their behalf. However, it is well settled that a taxpayer's reliance on an agent, such as an accountant, to file a return or pay tax by the due date is not reasonable cause because a taxpayer has a personal, non-delegable obligation to meet statutory deadlines. (See *U.S. v Boyle* (1985) 469 U.S. 241, 252; *Appeal of Quality Tax & Financial Services, Inc.*, 2018-OTA-130P.) Simply put, appellants' reliance on their CPA to file their 2019 Form 540 NR on time is precisely the type of delegation of responsibility to meet a statutory deadline that the *Boyle* Court rejected as qualifying for reasonable cause treatment. Moreover, the CPA's handling of appellants' 2020 Form 1040 is not relevant to the late filing of their 2019 Form 540 NR. For these reasons, appellants have not established reasonable cause.

HOLDING

There was no reasonable cause for the late filing of appellants' 2019 Form 540 NR.

DISPOSITION

Respondent's action is sustained.

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Tommy Leung
Administrative Law Judge

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