

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 18011787  
**ASHRAF IBRAHIM ABDELKERIM** )  
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**OPINION**

Representing the Parties:

For Appellant: Ashraf Ibrahim Abdelkerim,  
Taxpayer/Witness  
Ileane Polis, Taxpayers’ Rights Advocate  
Tax Appeals Assistance Program

For Respondent: Meghan McEvelly, Tax Counsel III  
Maria Brosterhous, Tax Counsel IV

L. CHENG, Administrative Law Judge: Pursuant to California Revenue and Taxation Code (R&TC) section 19324, Ashraf Ibrahim Abdelkerim (appellant) appeals an action by respondent Franchise Tax Board (FTB) in denying his claim for refund of \$4,107.96<sup>1</sup> for the 2014 tax year. Office of Tax Appeals (OTA) administrative law judges Linda C. Cheng, Nguyen Dang, and Richard Tay held an oral hearing in this matter in Van Nuys on October 28, 2019. At the conclusion of the hearing, the record was closed and this matter was submitted for decision.

**ISSUE**

Whether appellant has established reasonable cause to abate the late-filing penalty.

**FACTUAL FINDINGS**

1. On January 4, 2016, FTB received a payment of \$19,082 from appellant for the 2014 tax year.

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<sup>1</sup>This amount consists of a \$3,816.50 late-filing penalty and a \$291.46 penalty for underpayment of estimated tax (estimated tax penalty). Appellant self-assessed the estimated tax penalty on his tax return and provided no argument on appeal for the abatement thereof, so we will not address this issue further.

2. On March 1, 2016, FTB received appellant's untimely filed 2014 California income tax return dated February 6, 2016. Appellant reported \$15,266 in tax, an estimated tax penalty of \$291, an overpayment of \$6,316, and claimed a \$6,025 refund.
3. FTB adjusted the total payments made and the estimated tax penalty but otherwise accepted and processed the return as filed. Additionally, FTB imposed a late-filing penalty of \$3,816.50, resulting in a balance due of \$716.37.
4. On July 28, 2016, appellant paid the balance due in full.<sup>2</sup> On September 26, 2016, appellant filed a claim for refund, seeking abatement of the late-filing penalty based on reasonable cause.
5. FTB denied appellant's claim, and this timely appeal followed.

### DISCUSSION

R&TC section 19131 imposes a penalty for the failure to file a return on or before the due date, unless it is shown that the late filing is due to reasonable cause and not due to willful neglect. (R&TC, § 19131(a).) The burden is on the taxpayer to establish reasonable cause for the failure to timely file. (*Appeal of M.B. and G.M. Scott* (82-SBE-249) 1982 WL 11906.) Here, appellant admits to the mistake of untimely filing his return but contends that reasonable cause exists to abate the late-filing penalty because his accountant failed to advise him as to the deadline by which to file his state tax return. Specifically, appellant asserts that his accountant advised him to file an extension to January 30, 2016, for his federal tax return but did not advise him as to his state tax return. Appellant admits he mistakenly believed that the federal extension also applied to the filing of his California return because his accountant failed to advise him properly.

It is well-established law that ignorance of the law does not excuse the failure to file a timely return. (*Appeal of Diebold, Inc.* (83-SBE-002) 1983 WL 15389.) The United States Supreme Court has also held that each taxpayer has a personal, non-delegable duty to file a tax return by the due date. (*United States v. Boyle* (1985) 469 U.S. 241, 252.) That is, “[t]he 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’ for a late filing.” (*Ibid.*) Given this non-delegable duty to timely file, reliance on his accountant to advise appellant as to the due date of his California tax

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<sup>2</sup> FTB wrote off a \$0.50 portion of the interest which had accrued.

return would not constitute reasonable cause. At any rate, appellant admits that his accountant did not advise him as to the deadline to file his state tax return, so there was no reliance on professional advice.

Lastly, appellant maintains that he has a history of timely filing and paying his taxes. California, however, does not permit penalty abatement due to good filing history.<sup>3</sup> Instead, reasonable cause must be established, which appellant has not done here.

**HOLDING**

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

**DISPOSITION**

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

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Linda C. Cheng  
Administrative Law Judge

We concur:

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Nguyen Dang  
Administrative Law Judge

DocuSigned by:  
  
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Richard Tay  
Administrative Law Judge

Date Issued: 1/28/2020

<sup>3</sup> While the Internal Revenue Service has an administrative program called “First Time Abate,” under which it will abate timeliness penalties if a taxpayer has timely filed returns and paid tax for the past three years, neither the California Legislature nor FTB has adopted a comparable penalty abatement program.