

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 20096625  
**R. MENGHANI** )  
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**OPINION**

Representing the Parties:

For Appellant: R. Menghani  
For Respondent: Noel Garcia, Tax Counsel  
Ellen Swain, Tax Counsel IV  
For Office of Tax Appeals: Matthew McDermott,  
Graduate Student Assistant

A. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, R. Menghani (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$1,515.78 for the 2018 tax year.<sup>1</sup>

Office of Tax Appeals Administrative Law Judges Alberto T. Rosas, Daniel K. Cho, and Andrea L.H. Long held a virtual hearing for this matter on August 17, 2021. At the conclusion of the hearing, the record was closed, and this matter was submitted for a written opinion.

**ISSUES**

1. Whether appellant has established reasonable cause for failing to timely file a 2018 return.
2. Whether appellant has established a basis for abatement of interest.

**FACTUAL FINDINGS**

1. Appellant untimely filed his 2018 tax return on March 9, 2020.

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<sup>1</sup> This amount consists of a late filing penalty of \$1,499.50 and interest of \$16.28.

2. After processing appellant's return, respondent sent a Notice of Tax Return Change – Revised Balance on March 17, 2020, to inform appellant that it imposed a late filing penalty, plus related interest.
3. By May 18, 2020, appellant remitted his balance due to respondent.
4. Appellant filed a claim for refund for the late filing penalty and interest. Respondent denied appellant's claim.
5. This timely appeal followed.

### DISCUSSION

#### Issue 1: Whether appellant has established reasonable cause for failing to timely file a 2018 return.

A late filing penalty will be imposed when a taxpayer fails to file a tax return on or before its due date, unless the taxpayer establishes that the late filing was due to reasonable cause and was 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 late filing penalty, the law presumes that the penalty was imposed correctly. (*Appeal of Xie*, 2018-OTA-076P.) The burden of proof is on the taxpayer to show that reasonable cause exists to support abating the penalty. (*Ibid.*) Here, it is undisputed that respondent properly computed the late filing penalty. Additionally, neither party asserts the presence of willful neglect, and therefore the only issue here is whether appellant has established reasonable cause to abate the late filing penalty.

To establish reasonable cause, a 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.) Unsupported assertions are insufficient to satisfy the taxpayer's burden. (*Ibid.*)

Generally, ignorance of the law does not constitute reasonable cause because the taxpayer does not have to be a tax expert to know that tax returns have fixed filing deadlines. (*Appeal of*

*Porreca*, 2018-OTA-095; *U.S. v. Boyle* (1985) 469 U.S. 241, 251.<sup>2</sup>) The taxpayer who fails to acquaint him or herself with the requirements of California tax law has not exercised ordinary business care and prudence. (See *Appeal of Porreca, supra.*) Each taxpayer has a personal, non-delegable obligation to file the tax return by the due date. (*U.S. v. Boyle, supra*, at p. 247.)

However, reasonable cause may be established when a taxpayer relied on the erroneous advice of a tax expert concerning a complex and substantive question of law. (*U.S. v. Boyle, supra*, 469 U.S. 241, 251.) If a taxpayer relies on the improper advice of an accountant or tax attorney as to a matter of tax law, failing to file a return in reliance on that advice may be considered reasonable cause if at least two conditions are met: (1) the person relied on 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. (*Estate of La Meres v. Commissioner* (1992) 98 T.C. 294, 315-318.)

Here, appellant argues the late filing of his return occurred through no fault of his own because he relied on his tax preparer to timely file his 2018 tax return. Appellant states that he did not know that his return was filed late until he received the Notice of Tax Return Change – Revised dated March 17, 2020. There is no basis to abate the late filing penalty under these circumstances.

Appellant's reliance on *Appeal of Armstrong* (64-SBE-068) 1964 WL 1473, is also misplaced. The taxpayer's basis for reasonable cause in that case was based upon a tax professional's assessment that the nonresident taxpayer had a filing requirement in California, which "cannot be said to be such a simple and fundamental matter that an untutored layman would be unjustified in relying upon his adviser to call the requirement to his attention." (*Appeal of Armstrong, supra.*) In contrast, appellant knew that a 2018 return needed to be filed and testified that he was relying on his tax preparer to timely file his return. Therefore, we have no basis to abate the late filing penalty.

#### Issue 2: Whether appellant has established a basis for abatement of interest.

Imposing interest on a tax deficiency is mandatory. (R&TC, § 19101(a).) Interest is not a penalty but is compensation for the taxpayer's use of money after it should have been paid to

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<sup>2</sup> Because the relevant language of R&TC section 19131 pertaining to the reasonable cause exception is patterned after Internal Revenue Code section 6651, federal court interpretation of the reasonable cause standard is persuasive authority in determining the proper application of this California statute. (See *Andrews v. Franchise Tax Bd.* (1969) 275 Cal.App.2d 653, 658.)

the state, and it can only be abated in certain limited situations when authorized by law. (*Appeal of Moy*, 2019-OTA-057P.) There is no reasonable cause exception to the imposition of interest. (*Ibid.*)

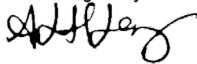
To obtain interest abatement or waiver, appellant must qualify under one of the following: R&TC section 19104, 21012, or 19112. First, R&TC section 19104 does not apply here because appellant does not allege, and the evidence does not show, that the interest at issue is attributable, in whole or in part, to any unreasonable error or delay by an officer or employee of respondent when performing a ministerial or managerial act. Second, R&TC section 21012 does not apply because respondent did not provide appellant with any requested written advice. Lastly, even if appellant had sought a waiver of interest under R&TC section 19112 and was denied by respondent, the Office of Tax Appeals does not have jurisdiction to review respondent's denial of a waiver of interest under R&TC section 19112, which requires a showing of extreme financial hardship. (See *Appeal of Moy*, *supra*.) Accordingly, appellant has not established that he is entitled to interest abatement or waiver.

HOLDINGS


1. Appellant has not established reasonable cause for failing to timely file a 2018 return.
2. Appellant has not established a basis for abatement of interest.

DISPOSITION

Respondent’s action is sustained.

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 Andrea L.H. Long  
 Administrative Law Judge

We concur:

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 Alberto T. Rosas  
 Administrative Law Judge

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 Daniel K. Cho  
 Administrative Law Judge

Date Issued: 10/5/2021