

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 21098665  
**J. INGWELL** )  
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**OPINION**

Representing the Parties:

For Appellant: Michael A. Lawlor, CPA

For Respondent: Eric R. Brown, Tax Counsel III

For Office of Tax Appeals: Duy Truong, Graduate Student Assistant

A. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. Ingwell (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$1,115<sup>1</sup> for the 2018 tax year.

Appellant has elected this appeal to be determined pursuant to the procedures of the Small Case Program. Those procedures require the assignment of a single administrative law judge. (Cal. Code Regs., tit. 18, § 30209.1.) Appellant waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

**ISSUES**

1. Whether appellant has established reasonable cause to abate the late filing penalty.
2. Whether appellant is entitled to an abatement of the estimated tax penalty.

**FACTUAL FINDINGS**

1. FTB obtained information from the IRS indicating that appellant filed a 2018 federal income tax return with a California address and may have a California filing requirement for 2018.

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<sup>1</sup> This amount consists of the late filing penalty of \$1,043 and an underpayment of the estimate tax penalty (estimated tax penalty) of \$72.

2. On July 27, 2020, FTB sent appellant a Request for Tax Return (Request) for the 2011 tax year, requiring appellant to file a 2018 California tax return, complete Reply to FTB-Questionnaire (Form 4602F) to determine if he has a filing requirement, or submit Form 4602F and a copy of his 2018 tax return to show that he had already filed a tax return.
3. On August 7, 2020, appellant provided a 2018 California Resident Income Tax Return (Form 540) dated May 29, 2019. Appellant reported a tax due of \$4,172 and self-assessed an estimated tax penalty of \$72, resulting in a total amount due of \$4,244. Appellant previously remitted payment of \$4,244 on June 8, 2019, which FTB applied to the 2018 tax year.
4. On August 26, 2020, FTB sent appellant a Notice of Tax Return Change. FTB's calculation shows that it decreased appellant's California income tax withholding by \$2,400, imposed a late filing penalty of \$1,643, and increased the estimated tax penalty to \$147.
5. FTB applied \$1,184 from the 2020 tax year account to the 2018 tax year account, which satisfied appellant's account balance.
6. Appellant filed a claim for refund of \$1,184.
7. FTB denied appellant's claim for refund in the revised amount of \$1,115.<sup>2</sup>
8. This timely appeal followed.

### DISCUSSION

#### Issue 1: Whether appellant has established reasonable cause to abate the late filing penalty.

A taxpayer filing on a calendar year basis must file a return by April 15th following the close of the calendar year. (R&TC, § 18566.) Alternatively, a taxpayer may file a return on or before the automatic extended due date, which is six months from the original due date. (Cal. Code Regs., tit. 18, § 18567.) R&TC section 19131 imposes a late filing penalty when a taxpayer fails to file a 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. When FTB imposes a penalty, the law presumes that FTB properly imposed the penalty. (*Appeal of Xie*, 2018-OTA-

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<sup>2</sup> The \$2,400 disparity for withholdings was later substantiated by appellant. FTB then correspondingly reduced the late filing penalty and the estimated tax penalty to \$1,043 and \$72, respectively.

076P.) Appellant filed his 2018 California income tax return after the original due date of April 15, 2019. Therefore, FTB properly imposed a 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.) A taxpayer must provide credible and competent evidence supporting a claim of reasonable cause to overcome the presumption of correctness attached to the penalty. (*Appeal of Xie, supra.*) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.)

Appellant contends that he timely filed his 2018 return in May 2019, but was unaware that FTB did not receive it. Appellant attributes the unsuccessful filing to a “mechanical ‘glitch’.”

The untimely filing of a tax return due to a mistaken belief that the return was timely filed does not constitute reasonable cause. It requires no special training or effort to ascertain a deadline and make sure that it is met, and a taxpayer has a personal obligation to meet statutory deadlines. (*Appeal of Rogeau*, 2021-OTA-335P.) Appellant's error in failing to take steps to confirm that the return was timely filed does not relieve appellant of the unambiguous and precisely defined duty to comply with the statute. Regarding appellant's claim that the failure to timely file was due to a mechanical glitch, appellant provided a document he received from his accountant with his claim for refund as evidence that his return was successfully filed electronically. However, the document indicates an “e-file error” occurred when his software attempted to file appellant's California return and provides direction to “correct any schema errors.” This indicates that the purported mechanical glitch was not due to a malfunction of appellant's tax preparation software but instead user error. (See *Appeal of Mauritzson*, 2021-OTA-198P.) As such, this does not establish reasonable cause.

Appellant asserts that once he became aware in 2020 that FTB had not received his 2018 return, he took immediate action to file it. However, reasonable cause is gauged at the time that a return is due. (*Morrissey v. Commissioner*, T.C. Memo. 1998-443.) There is no indication what steps, if any, appellant took to ensure his return was timely filed by the due date or within the extension period. Moreover, although there may have been no intention to avoid filing the

2018 return, as appellant contends, an oversight or appellant's lack of due diligence is not a basis for granting relief from the penalty. (*Appeal of Auburn Old Town Gallery, LLC*, 2019-OTA-319P.) As such, the late filing penalty cannot be abated.

Issue 2: Whether appellant is entitled to an abatement of the estimated tax penalty.

California conforms to Internal Revenue Code (IRC) section 6654 and imposes an estimated tax penalty for the failure to timely make estimated income tax payments. The estimated tax penalty is similar to an interest charge in that it is calculated by applying the applicable interest rate to the underpayment of estimated tax. (See IRC, § 6654(b)(2).) The estimated tax penalty is mandatory unless the taxpayer establishes that a statutory exception applies. (*Appeal of Johnson*, 2018-OTA-119P.)

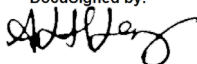
Appellant makes the same reasonable cause argument as provided for the late filing penalty. However, unlike the late filing penalty, there is no authority to abate the estimated tax penalty based on reasonable cause. (*Appeal of Johnson, supra.*)<sup>3</sup> As such, the estimated tax penalty cannot be abated.

HOLDINGS

1. Appellant has not established reasonable cause to abate the late filing penalty.
2. Appellant is not entitled to an abatement of the estimated tax penalty.

DISPOSITION

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

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Andrea L.H. Long  
Administrative Law Judge

Date Issued: 5/31/2022

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<sup>3</sup> There are a few limited exceptions to the penalty (see, IRC, § 6654(e)), but appellant does not raise any of them here.