

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 21047568  
A. MOSHE HAI AND )  
S. MOSHE HAI )  
\_\_\_\_\_)

**OPINION**

Representing the Parties:

For Appellants: David Goral, Representative

For Respondent: David Muradyan, Tax Counsel III

R. TAY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, A. Moshe Hai and S. Moshe Hai (appellants) appeal an action by Franchise Tax Board (respondent) denying appellants’ claim for refund of \$6,758.75 for the 2018 tax year.

Office of Tax Appeals Administrative Law Judges John O. Johnson, Josh Aldrich, and Richard Tay held an oral hearing for this matter in Cerritos, California, on June 29, 2022. At the conclusion of the hearing, the record was held open for additional briefing. On August 31, 2022, the record was closed and this matter was submitted for an opinion.

**ISSUE**

Whether appellants have shown error in respondent’s denial of appellants’ claim for refund for the 2018 tax year.

**FACTUAL FINDINGS**

1. Appellants’ tax preparer (who is also their representative on appeal) attempted to file appellants’ federal and California 2018 income tax returns on October 15, 2019, using Lacerte, an income tax preparation software.
2. Appellants did not have the proper security information for the IRS to accept their federal income tax return, and so, the IRS rejected appellants’ federal income tax return. Consequently, the software rejected appellants’ California income tax return and did not

- submit it to respondent. However, with their California income tax return, appellants also submitted a tax payment, which respondent accepted.
3. The Lacerte software recorded this rejection on October 15, 2019, and the record was viewable by appellants through the software.
  4. Since respondent did not receive appellants' 2018 California income tax return, respondent sent appellants a notice dated September 2, 2020, which stated that respondent had not received appellants' return. In response, appellants filed their return on September 9, 2020.
  5. Respondent assessed the late-filing penalty and interest in the amount of \$6,758.75, the estimated tax penalty in the amount of \$792.00 and interest and fees in the amount of \$1,300.36. Appellants paid their outstanding balance and filed a claim for refund.<sup>1</sup>
  6. Respondent denied appellants' claim for refund in a notice dated February 18, 2021, and appellants filed this timely appeal.

#### DISCUSSION

Respondent imposes a late-filing penalty when a taxpayer does not timely file a return, unless it is shown that the failure to timely file was due to reasonable cause and not due to willful neglect. (R&TC, § 19131(a).) When respondent imposes this penalty, the law presumes that it is correct. (*Appeal of Xie*, 2018-OTA-076P.) The taxpayer must provide credible and competent evidence to support a claim of reasonable cause; otherwise, the penalty cannot be abated. (*Ibid.*)

Here, it is undisputed that appellants did not file a timely 2018 California income tax return. Appellants also do not allege that respondent erred in its calculation of the penalty, and there is no evidence of any such error in the record. Rather, appellants contend that reasonable cause existed to excuse the late filing of their return. Appellants' preparer attempted to file a timely income tax return through the Lacerte software, but the software erroneously rejected appellants' California income tax return filing. Appellants also contend that they did not know that they had failed to file their return until respondent sent them the notice dated September 9, 2020. Since respondent accepted appellants' tax payment on or around

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<sup>1</sup> Appellants requested a refund of only the late-filing penalty, which is the only amount on appeal.

October 15, 2019, appellants concluded that their 2018 California income tax return was also accepted.

To establish reasonable cause, the 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 prudent businessperson to have acted under similar circumstances. (*Appeal of Head and Feliciano*, 2020-OTA-127P.) Reliance on tax preparation software may constitute reasonable cause if the software suffered from a programming flaw or instructional error. (*Morales v. Commissioner*, T.C. Memo. 2012-341; *Appeal of Mauritzson*, 2021-OTA-198P.) Here, appellants would have filed a timely 2018 California income tax return if the Lacerte software had not rejected appellants' filing attempt. Respondent asserted that it has no record of appellants' filing attempt on October 15, 2019, and no record that it rejected appellants' attempted filing. Rather, the software rejected appellants' California return because of appellants' lack of a proper federal security PIN to file their 2018 federal income tax return.

It is not clear to the panel why the software rejected appellants' attempt to file their California income tax return. The ability to file a California income tax return is not predicated on the filing of a federal income tax return. Thus, Lacerte's rejection of the California income tax return appears to be a programming error that initially prevented appellants from being able to timely file their 2018 income tax return. However, even if reasonable cause existed when appellants filed their return, the reasonable cause analysis does not end here.

The analysis of whether reasonable cause existed to excuse the late filing of an income tax return is not limited to the time the return was due; rather, the inquiry must continue until the return is filed. (*Appeal of Moren*, 2019-OTA-176P.)<sup>2</sup> Reasonable cause can excuse the late filing of a return "only so long as the reason remains valid." (*Appeal of Triple Crown Baseball LLC*, 2019-OTA-025P.) Lacerte may have erroneously rejected appellants' California income tax return filing on October 15, 2019, but it notified appellants' tax preparer of that rejection on the same day. Appellants did not file their return until nearly one year later. There is no evidence in the record that reasonable cause existed to justify the one-year delay in filing appellants' 2018 California income tax return. Appellants' representative asserts that they were not notified of the rejection until September 2020; however, the evidence from Intuit (the

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<sup>2</sup> The penalties for late filing and late payment are treated similarly when it comes to the reasonable cause analysis. (*Appeal of Triple Crown Baseball LLC*, 2019-OTA-025P.)


company that produces Lacerte) shows that appellants’ preparer had access to the rejected status of appellants’ return on October 15, 2019. A reasonably prudent businessperson would have checked for such notifications to ensure the proper filing of appellants’ California income tax return, especially given the rejection of appellants’ federal income tax return. Despite the apparent defect in the Lacerte tax software with regard to the initial filing attempt, appellants had the ability and ample opportunity to file their 2018 California income tax return, but did not do so until September 2020. There is no valid reason in the record to excuse such a delay that would constitute reasonable cause. Consequently, reasonable cause did not exist to excuse the late filing of appellants’ 2018 California income tax return.

HOLDING

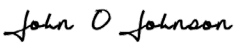
Appellants have not shown error in respondent’s denial of appellants’ claim for refund for the 2018 tax year.


DISPOSITION

Respondent’s action denying appellants’ claim for refund is sustained in full.

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Richard Tay  
Administrative Law Judge

We concur:

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John O. Johnson  
Administrative Law Judge

DocuSigned by:  
  
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Josh Aldrich  
Administrative Law Judge

Date Issued: 11/21/2022