

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:

A. PATEL AND

B. PATEL

) OTA Case No. 21098554
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OPINION

Representing the Parties:

For Appellants:

John R. Wheeler, Jr., CPA

For Respondent:

Christopher M. Cook, Tax Counsel

J. ALDRICH, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, A. Patel and B. Patel (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants' claim for refund of \$6,771.75 for the 2019 tax year.

Appellants waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

ISSUE

Whether appellants have established reasonable cause to abate the late-filing penalty for the 2019 tax year.

FACTUAL FINDINGS

1. Appellants untimely filed their 2019 California Resident Income Tax Return. FTB received the return on January 11, 2021.
2. FTB assessed the late-filing penalty of \$6,771.75.
3. Appellants paid the penalty and related interest in February 2021.
4. FTB received appellants' claim for refund on March 11, 2021.
5. FTB denied the claim for refund for lack of reasonable cause via letter dated June 9, 2021.

6. Appellants timely appealed to Office of Tax Appeals (OTA).

DISCUSSION

R&TC section 19131 provides that a late-filing penalty shall 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 is due to reasonable cause and not due to willful neglect. Each taxpayer has a personal, non-delegable obligation to file a tax return by the due date. (*Appeal of Quality Tax & Financial Services, Inc.*, 2018-OTA-130P.) The late-filing penalty is calculated at 5 percent of the tax due for each month or fraction of each month the return is late, with a maximum penalty of 25 percent of the tax due. (R&TC, § 19131(a).)

When FTB imposes a penalty, it is presumed that the penalty was imposed correctly. (*Appeal of Xie*, 2018-OTA-076P.) A taxpayer may rebut this presumption by providing evidence supporting abatement of the penalty for reasonable cause. (*Ibid.*)

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 cause existed as would prompt an ordinarily intelligent and prudent businessperson to have so acted under similar circumstances. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.)

There is no dispute that appellants filed their return after the due date, and there is no dispute regarding the calculation of the penalty. The only issue on appeal is whether appellants have established reasonable cause for the late filing of their return. Appellants assert that their tax preparer, who is their representative for this appeal, “came down with covid” in July 2020, which caused him to untimely file appellants’ 2019 tax return. Appellants’ tax preparer claims that COVID-19 left him bedridden for two weeks, he lost 15 pounds, and he was very weak after. Appellants’ tax preparer further claims that it took him almost a year to get his strength back, and that because of COVID-19, he was having difficulty getting everything done on time. Appellants’ tax preparer argues that although appellants’ 2019 return did not get filed by the extended due date of October 15, 2020, appellants paid all of the taxes due by that date.

In response, FTB argues that appellants have not established reasonable cause to abate the late-filing penalty because reliance on a tax preparer to timely file a return is not reasonable cause. FTB argues that taxpayers have a non-delegable duty to timely file their returns, and as support, cites to *Appeal of Quality Tax & Financial Services, Inc.*, *supra*, and *U.S. v. Boyle*

(1985) 469 U.S. 241, 252. Therefore, FTB asserts that appellants did not exercise ordinary business care and prudence when they relied on their tax preparer to timely file their 2019 return.

OTA finds appellants have not established reasonable cause to abate the late-filing penalty. Although appellants' tax preparer had COVID in July 2020, this was well before the extended due date of October 15, 2020,¹ to file the 2019 tax return, and while it is undisputed that COVID-19 was impacting the world during the period at issue, appellants have not indicated, or provided any documentary evidence showing, what actions, if any, they took during this time.² Since appellants' duty to timely file is non-delegable, and appellants have not provided evidence to demonstrate reasonable cause, OTA finds that appellants have failed to meet their burden of proof.

¹ For the 2019 tax year, FTB postponed the original due date to file tax returns for individuals from April 15, 2020, to July 15, 2020, because of COVID-19, and allowed an automatic extension of time to October 15, 2020, if the return was filed by that date. (See <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2020-3-state-postpones-tax-deadlines-until-july-15-due-to-the-covid-19-pandemic.html#:~:text=Sacramento%20%E2%80%93%20The%20Franchise%20Tax%20Board,2019%20tax%20return%20payments.>)

² For the 2019 tax year, FTB also postponed the due date for individuals to timely pay 2019 tax return payments from April 15, 2020, to July 15, 2020, because of COVID-19. Appellants' claim that they timely paid their 2019 taxes is incorrect because they filed an untimely return no earlier than January 2021, showing a tax due of \$27,087, which FTB used to compute the maximum late-filing penalty of \$6,771.75 (i.e., \$27,087 x 25 percent).

HOLDING

Appellants have not established reasonable cause to abate the late-filing penalty for the 2019 tax year.

DISPOSITION

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

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Josh Aldrich
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Josh Aldrich
Administrative Law Judge

We concur:
DocuSigned by:
Kenneth Gast
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Kenneth Gast
Administrative Law Judge

DocuSigned by:
Keith T. Long
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Keith T. Long
Administrative Law Judge

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