

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of:

**J. MIKA AND**  
**D. MIKA**

) OTA Case No. 220510443  
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**OPINION**

Representing the Parties:

For Appellants: Sandra D. Vanway, CPA

For Respondent: Brian Werking, Tax Counsel III

C. AKIN, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. Mika and D. Mika (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$14,852.50, plus applicable interest, for the 2019 tax year.

Appellants waived the right to an oral hearing; therefore, Office of Tax Appeals (OTA) decides the matter based on the written record.

**ISSUE**

Whether appellants have established reasonable cause to abate the late-filing penalty.

**FACTUAL FINDINGS**

1. On August 6, 2021, appellants untimely filed a joint 2019 California Nonresident or Part-Year Resident Income Tax Return (Form 540NR), reporting tax due of \$59,410, which appellants also paid on August 6, 2021.
2. FTB accepted appellants’ 2019 return as filed but subsequently issued a Notice of Tax Return Change – Revised Balance to appellants imposing a late-filing penalty of \$14,852.50, and interest.
3. Appellants paid the balance due and filed a claim for refund seeking abatement of the late-filing penalty.

4. FTB denied appellants' claim for refund, and this timely appeal followed.

#### DISCUSSION

California imposes a penalty for failing to file a return on or before the due date, unless the taxpayer shows that the failure is due to reasonable cause and not due to willful neglect. (R&TC, § 19131(a).) When FTB imposes a late-filing penalty, it is presumed to have been correctly imposed, and the burden of proof is on the taxpayer to show that reasonable cause exists to abate the penalty. (*Appeal of Xie*, 2018-OTA-076P.) To overcome the presumption of correctness, the taxpayer must provide credible and competent evidence supporting a claim of reasonable cause. (*Ibid.*) 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 so acted under similar circumstances. (*Appeal of Head and Feliciano*, 2020-OTA-127P.)

The U.S. Supreme Court has held that “reasonable cause” is established when a taxpayer shows reasonable reliance on the advice of an accountant or attorney that it was unnecessary to file a return, even when such advice turns out to be mistaken. (*U.S. v. Boyle* (1985) 469 U.S. 241, 250 (*Boyle*)). California follows *Boyle* in that a taxpayer’s reliance on a tax professional must involve reliance on substantive tax advice and not on simple clerical duties. (*Appeal of Mauritzson*, 2021-OTA-198P.)

Appellants contend that they had reasonable cause for their failure to timely file their 2019 California return because “as a Texas company and as full time Texas residents, [appellants] mistakenly understood that [they] were only liable for [f]ederal [i]ncome and Texas franchise taxes . . . .”<sup>1</sup> Appellants further note their company’s sales were from items produced in and shipped from the state of Texas. Appellants state that they wanted to do their “due diligence,” and as the company quickly grew, they reached out to accounting advisors and lawyers and “[n]one were certain about the out of State personal income tax laws or if [appellants] should be filing.” Appellants note that they ultimately hired a new accounting firm in 2021 and were finally advised that they should register and file in California. Appellants state that they promptly filed their 2019 California tax return thereafter.

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<sup>1</sup> Per appellants’ 2019 California nonresident return, appellants reported \$681,620 of California source income from a pass-through entity.

While OTA understands appellants' contentions here, ignorance or a misunderstanding of the law generally does not excuse a taxpayer's noncompliance with California tax laws. (*Appeal of Wright Capital Holdings LLC*, 2019-OTA-219P.) Additionally, while appellants contend that they attempted to do their "due diligence" and that the accounting advisors and lawyers that they contacted were not certain about appellants' obligations to file personal income tax returns in other states (including California), this is not sufficient to establish reasonable cause. First, to the extent that these accounting advisors and lawyers indicated to appellants that they were uncertain as to appellants' personal return filing requirements in California, OTA concludes that ordinary business care and prudence required appellants to consult with other tax professionals who were not uncertain and could properly advise appellants as to their return filing requirements in California. This is especially true since appellants received a significant amount of income from California during the 2019 tax year. Despite this, appellants fail to explain what specific advice was given to them by these accounting advisors and lawyers or why these advisors and lawyers were uncertain as to appellants' filing obligation in California for the 2019 tax year given appellants' receipt of significant income from California sources.

Additionally, in order to establish reasonable cause based on substantive advice of a tax professional, a taxpayer must show that: (1) the person relied on by the taxpayer is a tax professional with competency in the subject tax law; and (2) the tax professional's advice is based on the taxpayer's full disclosure of relevant facts and documents. (*Appeal of Summit Hosting LLC*, 2021-OTA-216P, citing *Boyle, supra.*) OTA has previously held that this requires a showing that the tax professional consulted by the taxpayer had expertise in California tax law. (*Appeal of Summit Hosting LLC, supra.*) Here, appellants only provide unsupported assertions that they consulted with various tax professionals who were uncertain as to appellants' personal return filing obligations in California. Appellants have not provided any evidence to establish that: (1) these tax professionals and lawyers expressly advised appellants that they did not have a return filing requirement in California for the 2019 tax year; (2) this advice (if given) was based on appellants' full disclosure of all relevant facts and documents; and (3) that the tax professionals consulted had the necessary expertise in California tax law. Thus, appellants have not met their burden to establish reasonable cause for their failure to timely file their 2019 California income tax return.

HOLDING

Appellants have not established reasonable cause to abate the late-filing penalty.

DISPOSITION

FTB’s action is sustained.

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*Cheryl L. Akin*  
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Cheryl L. Akin  
Administrative Law Judge

We concur:  
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*Josh Aldrich*  
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Josh Aldrich  
Administrative Law Judge

DocuSigned by:  
*Teresa A. Stanley*  
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Teresa A. Stanley  
Administrative Law Judge

Date Issued: 12/29/2022