

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

In the Matter of the Appeal of:  
**M. WONG**

) OTA Case No. 220610601  
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**OPINION**

Representing the Parties:

For Appellant: Carol Dorothy, Representative

For Respondent: AnaMarija Antic-Jezildzic, Specialist

For Office of Tax Appeals: Zack Sabbagh, Graduate Student Assistant

C. AKIN, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. Wong (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$2,680.84 for the 2019 tax year.<sup>1</sup>

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

**ISSUES**

1. Whether appellant has established that reasonable cause exists to abate the late-filing penalty.
2. Whether appellant has established a basis to abate the underpayment of estimated tax penalty (estimated tax penalty).
3. Whether appellant has established a basis to abate interest.
4. Whether FTB properly imposed the collection cost recovery fee.

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<sup>1</sup> This amount consists of a late-filing penalty of \$1,732.21, an underpayment of estimated tax penalty of \$102.00, a collection cost recovery fee of \$316.00, and applicable interest.

FACTUAL FINDINGS

1. Appellant untimely filed his 2019 California income tax return on October 15, 2021,<sup>2</sup> reporting tax due of \$6,958, interest and a late-filing penalty totaling \$2,133, an estimated tax penalty of \$102, and a total balance due of \$9,193. Appellant did not pay the reported balance due with the filing of his 2019 return.
2. On October 25, 2021, FTB issued appellant a Notice of Tax Return Change - Revised Balance, reducing the late-filing penalty to \$1,732.21.<sup>3</sup> The notice also included an estimated tax penalty of \$102.00, as self-assessed by appellant on his return, and applicable interest.
3. On December 13, 2021, FTB issued appellant an Income Tax Due Notice requesting payment of the balance due by December 28, 2021.
4. On December 15, 2021, appellant filed a request for abatement of the late-filing penalty, estimated tax penalty, and the applicable interest. FTB treated appellant's request for abatement as an unperfected claim for refund pending full payment of the balance due for the 2019 tax year.<sup>4</sup>
5. On January 19, 2022, FTB issued appellant a Final Notice Before Levy and Lien which indicated that FTB would take involuntary collection action against appellant and impose a collection cost recovery fee if appellant did not pay the balance due within 30 days.
6. Because appellant did not pay the balance due within 30 days, FTB pursued involuntary collection action and imposed a collection cost recovery fee of \$316.00. Appellant fully satisfied the balance due for the 2019 tax year through payments of \$9,609.67 and \$22.18 made on April 15, 2022, and June 8, 2022, respectively.

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<sup>2</sup> The deadline for filing 2019 California income tax returns and making payments of tax due was postponed to July 15, 2020, due to the COVID-19 pandemic. (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>.)

<sup>3</sup> Appellant's return did not include appellant's return payment of \$29.17 made on November 17, 2019. The Notice of Tax Return Change gave appellant credit for this payment and revised appellant's late-filing penalty based on this payment. The revised late-filing penalty was computed by subtracting the \$29.17 payment from the total tax of \$6,958.00 and multiply the remaining amount (\$6,928.83) by the 25 percent maximum penalty percentage, resulting in a revised late-filing penalty of \$1,732.21.

<sup>4</sup> See R&TC section 19322.1.

7. By letter dated May 20, 2022, FTB denied appellant's perfected claim for refund. This timely appeal followed.
8. On June 9, 2022, after appellant had fully paid the balance due for the 2019 tax year and after FTB issued its claim denial letter, FTB received an additional payment of \$9,641.04. FTB acknowledges that this payment is an overcollection, and has agreed to refund this amount, plus applicable interest, to appellant.<sup>5</sup>

### DISCUSSION

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

California imposes a penalty for the failure to timely file a return, unless it is shown that the late filing is due to reasonable cause and not willful neglect. (R&TC, § 19131(a).) The amount of the penalty is five percent of the tax due, after allowing for timely payments, for every month or fraction of a month that the return is late, up to a maximum 25 percent penalty. (*Ibid.*) When FTB imposes a penalty, the law presumes that the penalty was imposed correctly, and the burden of proof is on the taxpayer to establish otherwise. (*Appeal of Xie*, 2018-OTA-076P.) To overcome the presumption of correctness attached to the penalty, a taxpayer must provide credible and competent evidence supporting a claim of reasonable cause; otherwise, the penalty cannot be abated. (*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. (*Appeal of Head and Feliciano*, 2020-OTA-127P.) The taxpayer bears the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Appeal of Belcher*, 2021-OTA-284P.) It is well established that each taxpayer has a personal, non-delegable obligation to ensure the timely filing of a tax return, and thus, reliance on an agent to perform this act does not constitute reasonable cause to abate a late-filing penalty. (*U.S. v. Boyle* (1985) 469 U.S. 241, 251-252; *Appeal of Quality Tax & Financial Services, Inc.*, 2018-OTA-130P.)

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<sup>5</sup> FTB also indicates that it erroneously imposed a \$96.43 mandatory electronic payment penalty with the collection of this final payment. FTB has agreed to abate this penalty and refund a total of \$9,737.47 (\$9,641.04 + \$96.43), plus applicable interest, to appellant.

Here, appellant untimely filed his 2019 California tax return on October 15, 2021, which is one year and three months after the postponed due date of July 15, 2020. Thus, OTA finds that the late-filing penalty was correctly calculated and imposed.

On appeal, appellant asserts that there is reasonable cause to abate the penalty. In support, appellant provides an email he sent to his accountant dated June 22, 2020, containing various tax documents; an email from appellant's accountant to appellant dated September 13, 2021, regarding "2019 & 2020 Tax returns – W-3C Group and WCR Group," noting that "copies of the 2019 and 2020 tax returns, [a]ction [i]tems, and K1[s] for W-3C Group and WCR Group have been uploaded to [the accountant's client] portal"; and a letter from appellant's accountant to appellant dated September 30, 2021, regarding the "Irrevocable 1999 Trust of [M.] & [I.] Wong UTD 12/10/99" indicating that the accountant had "prepared and enclosed your 2019 Trust Income Tax returns for the year ended December 31, 2019." Appellant contends that the documents show that appellant submitted his tax information to his accountant at least three months before the October 15, 2020 extended due date for filing his 2019 return, the accountant had plenty of time to prepare appellant's 2019 return, the accountant did not complete the return until more than one year after the extended due date, and that this was entirely the fault of the accountant, rather than appellant.<sup>6</sup>

However, the evidence and arguments presented by appellant do not establish reasonable cause for the late filing of appellant's 2019 return. First, the email from appellant's accountant dated September 13, 2021, appears to relate to 2019 and 2020 returns for two business entities, W-3C Group and WCR Group, and the letter from appellant's accountant dated September 30, 2021, appears to relate to a 2019 return for appellant's irrevocable trust. Thus, the correspondence from appellant's accountant does not appear to relate to appellant's 2019 personal income tax return. While these emails may relate to pass-through entities which potentially may have impacted or affected appellant's personal income tax liability, appellant does not explain his relationship to the entities or why these entities were relevant to appellant's personal income tax return. In any event, the email and letter from appellant's accountant in September 2021, are well past the July 2020 filing deadline for appellant's 2019 return.

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<sup>6</sup> In the December 15, 2021 request for a batement filed with FTB, appellant asserted that the late filing was due to his father's illness. However, appellant does make this assertion on appeal, and instead contends that the late filing was due to the actions of his accountant. Since appellant does not assert the late filing was due to his father's illness on appeal, this contention will not be addressed further in this Opinion.

Additionally, while appellant provides an email to his accountant dated June 22, 2020, which he contends shows that he provided the accountant with his 2019 tax information on that date, it is unclear whether the email is related to appellant individually, the business entities, or the irrevocable trust. The subject of the email is simply “tax info,” and while appellant circles an excel document titled “M&I tax 2019,” this may relate to the irrevocable trust of M. & I. Wong, rather than appellant individually.

Even if appellant provided all of his tax information to his accountant on June 22, 2020, this alone is not sufficient to establish reasonable cause for the late filing of appellant’s 2019 return. As noted above, each taxpayer has a personal, non-delegable obligation to ensure the timely filing of a tax return, and thus, reliance on an agent to perform this act does not constitute reasonable cause to abate a late-filing penalty. (*U.S. v. Boyle, supra; Appeal of Quality Tax & Financial Services, Inc., supra.*) Thus, appellant’s reliance on his accountant to timely prepare and file a 2019 return on his behalf is not sufficient to establish reasonable cause.

Appellant also fails to describe what steps he took, if any, to follow up with his accountant regarding the preparation and filing of his 2019 tax return. The exercise of ordinary business care and prudence required appellant to do more than merely delegate the tasks necessary to timely file the return; it also required appellant take action to verify the return had been successfully transmitted. (*Appeal of Fisher, 2022-OTA-337P.*) While appellant contends that he provided the tax information to his accountant in June 2020, and that the accountant did not complete the return until September 2021, appellant does not indicate that he ever followed up with the accountant regarding this 15-month delay in the preparation of his 2019 return. Even if OTA were to find that appellant provided the necessary tax information to his accountant in June 2020, an ordinarily intelligent and prudent businessperson would have verified the status of his 2019 return shortly before the extended filing deadline in October 2020. Appellant has not shown that he ever followed up with his accountant during the relevant time period and has failed to establish reasonable cause for the late filing of the return. Therefore, the late-filing penalty may not be abated.

Issue 2: Whether appellant has established a basis to abate the estimated tax penalty.

R&TC section 19136 incorporates by reference Internal Revenue Code (IRC) section 6654, which imposes an estimated tax penalty upon an individual for failing to timely make estimated income tax payments. (R&TC, § 19136(a); IRC, § 6654.) The estimated tax

penalty may not be abated based solely on a finding of reasonable cause. (*Appeal of Johnson*, 2018-OTA-119P.) IRC section 6654(e)(3) provides limited exceptions to the imposition of the penalty if either of the following conditions are satisfied: (1) “by reason of casualty, disaster, or other unusual circumstances the imposition of [the penalty] would be against equity and good conscience”; or (2) the underpayment was due to reasonable cause and not willful neglect, and the taxpayer retired at the age of 62 or older in the year at issue or the prior year, or, alternatively, the taxpayer became disabled in the tax year for which the estimated tax payments were required to be made or in the preceding tax year.

Appellant does not dispute the calculation of the estimated tax penalty imposed for the 2019 tax year, which was self-assessed. Instead, appellant contends that the estimated tax penalty should be abated for the same reasons provided for abatement of the late-filing penalty. However, as noted above, the estimated tax penalty may not be abated based solely on a finding of reasonable cause. (*Appeal of Johnson, supra.*) Appellant offered no other argument or evidence to support his failure to make timely estimated tax payments for the 2019 tax year. The burden is on appellant, and he has not demonstrated that he is entitled to the relief provided by IRC section 6654(e)(3). Therefore, appellant has not shown that the estimated tax penalty for the 2019 tax year should be abated.

Issue 3: Whether appellant has established a basis to abate interest.

Tax is due on the original due date of the return without regard to any filing extension. (R&TC, § 19001.) If a taxpayer does not pay the tax by the original due date of the tax return, or if FTB assesses additional tax, the law provides for charging interest on the balance due. (R&TC, § 19101.) Imposition of interest is mandatory; it is not a penalty, but it is compensation for a taxpayer’s use of money after it should have been paid to the state. (*Appeal of Moy*, 2019-OTA-057P.) There is no reasonable cause exception to the imposition of interest. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.) To obtain relief from interest, a taxpayer must qualify under the waiver provisions of R&TC sections 19104, 19112, or 21012. (*Appeal of Moy, supra.*)

In this case, appellant only provides reasonable cause type arguments for the abatement of interest. Appellant has not shown that he qualifies for waiver or abatement of interest under the provisions of R&TC sections 19104, 19112, or 21012.<sup>7</sup> Additionally, there is no reasonable

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<sup>7</sup> OTA does not have jurisdiction to review FTB’s interest abatement determination under R&TC section 19112. (*Appeal of Moy, supra.*)

cause exception to the imposition of interest. (*Appeal of GEF Operating, Inc., supra.*) Consequently, OTA concludes that appellant is not entitled to interest abatement.

Issue 4: Whether FTB properly imposed the collection cost recovery fee.

R&TC section 19254(a)(1) requires FTB to impose a collection cost recovery fee when FTB notifies a taxpayer that the continued failure to pay an amount due may result in the imposition of the fee, and the taxpayer fails to timely pay the amount due in response to the notice. Once FTB properly imposes the fee, there is no language in the statute that would excuse the fee for any reason, including reasonable cause. (See *Appeal of Auburn Old Town Gallery, LLC*, 2019-OTA-319P.)

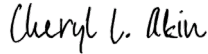
Here, FTB mailed appellant a Notice of Tax Return Change - Revised Balance dated October 25, 2021, and an Income Tax Due Notice dated December 13, 2021, both of which informed appellant that he had an outstanding balance due for the 2019 tax year. When appellant did not pay the balance due, FTB sent appellant a Final Notice Before Levy and Lien dated January 19, 2022, informing appellant that failure to pay his outstanding balance within 30 days of the notice would result in involuntary collection action and the imposition of a collection fee. Since appellant failed to pay the liability within 30 days after receiving the final notice, imposition of the collection cost recovery fee was required under R&TC section 19254(a)(1). OTA has no authority to abate or modify this fee. Therefore, OTA sustains FTB's imposition of the collection cost recovery fee.

HOLDINGS


1. Appellant has failed to establish that reasonable cause exists to abate the late-filing penalty.
2. Appellant has failed to establish a basis to abate the estimated tax penalty.
3. Appellant has failed to establish a basis to abate interest.
4. FTB properly imposed the collection cost recovery fee.

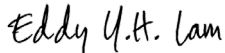
DISPOSITION

FTB’s action denying appellant’s claim for refund is sustained.<sup>8</sup>

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 Cheryl L. Akin  
 Administrative Law Judge

We concur:

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 Josh Aldrich  
 Administrative Law Judge

DocuSigned by:  
  
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 Eddy Y.H. Lam  
 Administrative Law Judge

Date Issued: 5/22/2023

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<sup>8</sup> As noted above, FTB has agreed to refund appellant a total of \$9,737.47, consisting of the June 9, 2022 overcollection in the amount of \$9,641.04, and the erroneously imposed mandatory electronic payment penalty of \$96.43.