

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

In the Matter of the Appeal of:  
**T. MACEIKO**

) OTA Case No. 21027280  
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**OPINION**

Representing the Parties:

For Appellant: T. Maceiko

For Respondent: Noel Garcia, Tax Counsel

O. AKOPCHIKYAN, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, T. Maceiko (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$16,122 for the 2016 tax year.

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

**ISSUE**

Whether appellant has established reasonable cause to abate the late filing penalty.

**FACTUAL FINDINGS**

1. Appellant did not timely file a 2016 California tax return.
2. FTB issued a Request for Tax Return to appellant on March 13, 2018, after receiving information from the Employment Development Department that appellant earned sufficient income in 2016 to create a filing requirement.
3. Appellant untimely filed a 2016 California return on March 30, 2018, reporting tax due of \$64,488.
4. FTB subsequently issued a notice to appellant imposing a late filing penalty of \$16,122.

5. Appellant satisfied all outstanding liabilities for the 2016 tax year on August 28, 2019, and filed a refund claim on October 14, 2020, requesting abatement of the late filing penalty due to reasonable cause.
6. FTB denied the refund claim and this timely appeal followed.

### DISCUSSION

California imposes a penalty for failing to file a tax return on or before the due date, unless the taxpayer shows that the failure is due to reasonable cause and not willful neglect. (R&TC, § 19131.) When FTB imposes a penalty, the law presumes the penalty was imposed correctly. (*Appeal of Xie*, 2018-OTA-076P.) A taxpayer may rebut this presumption by providing credible and competent evidence establishing reasonable cause. (*Ibid.*) Unsupported assertions are not enough to satisfy a taxpayer’s burden of proof. (*Appeal of Mauritzson*, 2021-OTA-198P.)

To establish reasonable cause, a taxpayer must show that the failure to timely file occurred despite the exercise of ordinary business care and prudence. (*Appeal of Jones*, 2021-OTA-144P.) In *U.S. v. Boyle* (1985) 469 U.S. 241, 252, the U.S. Supreme Court held that “[t]he failure to make a timely filing of a tax return is not excused by the taxpayer’s reliance on an agent, and such reliance is not ‘reasonable cause’ for a late filing . . . .” The Court noted that one does not need to be a tax expert to know that tax returns have fixed filing dates and taxes must be paid when due. (*Id.* at p. 251.)

Office of Tax Appeals (OTA) precedent has held that the exercise of ordinary business care and prudence requires that taxpayers do more than merely perform and/or delegate the tasks necessary to electronically file. (*Appeal of Fisher*, 2022-OTA-337P.) It also requires the taxpayer to personally verify that the tax return was successfully transmitted, and, where it has not been, to take the appropriate corrective actions. (*Ibid.*)

Here, appellant asserts that his tax preparer e-filed his 2016 federal and California returns on time, but (1) the IRS return was rejected because of an issue with an identification number, and (2) the California return was rejected because of the IRS rejection. Appellant contends that the IRS granted a 50 percent abatement of the late filing penalty for the 2016 tax year and, therefore, he is entitled to “at least a 50% abatement” of the California late filing penalty.

While OTA is sympathetic to appellant’s situation, OTA and federal precedent control the outcome of this case. The fact that appellant relied on his tax preparer to file his tax return

on time does not relieve him of his responsibility to ensure that it was timely filed. His tax preparer's failure to verify whether the return was filed when no confirmation was received does not constitute reasonable cause for appellant's late filing of his return.

Additionally, although the IRS may have abated a portion of the federal late filing penalty, California law does not require FTB to adopt the IRS's determination regarding a penalty abatement request. Instead, under California law, appellant must establish that his failure to timely file his 2016 California return was due to reasonable cause, which he has failed to do.<sup>1</sup> (*Appeal of Xie, supra.*) Accordingly, FTB's imposition of the late filing penalty must be upheld.

#### HOLDING

Appellant has not established reasonable cause to abate the late filing penalty.

#### DISPOSITION

FTB's action is sustained.

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*Ovsep Akopchikyan*

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Ovsep Akopchikyan  
Administrative Law Judge

We concur:

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*Sheriene Anne Ridenour*

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Sheriene Anne Ridenour  
Administrative Law Judge

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*Sara A. Hosey*

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Sara A. Hosey  
Administrative Law Judge

Date Issued: 6/15/2023

<sup>1</sup> Although R&TC section 19132.5 authorizes first-time abatement of a late filing penalty for certain filers, that section only applies to tax years beginning on or after January 1, 2022, and thus is not applicable here.