

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 220811212  
K. TSE AND )  
P. JOHNSTON )  
\_\_\_\_\_ )

**OPINION**

Representing the Parties:

For Appellants: Zachary Estela, Tax Appeals Assistance Program (TAAP)  
For Respondent: Brian Werking, Attorney

A. KLETTER, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, K. Tse and P. Johnston (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$2,916.50 plus interest<sup>1</sup> for the 2020 tax year.

Appellants elected to have this appeal determined pursuant to the procedures of the Small Case Program. Those procedures require the assignment of a single administrative law judge. (Cal. Code Regs., tit. 18, § 30209.1.)

Office of Tax Appeals (OTA) Administrative Law Judge Asaf Kletter held an oral hearing for this matter electronically via Webex, on July 20, 2023. At the conclusion of the hearing, the record was closed and this matter was submitted for an opinion.

**ISSUES**

1. Whether appellants have shown reasonable cause for the late filing of their 2020 tax return.
2. Whether appellants are entitled to interest abatement.

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<sup>1</sup> FTB imposed a late filing penalty of \$2,916.50. On appeal, appellants request a refund of their March 28, 2022 payment of \$1,987.44, which is the balance due on the Notice of Tax Return Change – Revised Balance dated February 14, 2022.

### FACTUAL FINDINGS

1. On January 27, 2022, appellants untimely filed their 2020 California Resident Income Tax Return (return).
2. FTB accepted appellants' return as filed. On February 14, 2022, FTB issued appellants a Notice of Tax Return Change – Revised Balance (notice), imposing a late filing penalty of \$2,916.50 plus interest.
3. Appellants subsequently paid the balance due for the 2020 tax year and filed a claim for refund seeking abatement of the late filing penalty and interest, which FTB denied.
4. This timely appeal followed. On appeal, appellants provided documentation including: (1) FTB confirmation of a Web Pay payment scheduled on October 15, 2021; (2) appellants' California e-file signature authorizations for their CPA dated October 15, 2021; and (3) a 2020 Activity Report from their tax preparation software dated March 27, 2022, that contains the e-file history and FTB's rejections of the 2020 return.

### DISCUSSION

#### Issue 1: Whether appellants have shown reasonable cause for the late filing of their 2020 tax return.

Absent an extension, personal income taxpayers who file on a calendar year basis are generally required to file their returns by April 15 of the following year. (R&TC, § 18566.)<sup>2</sup> Taxpayers may file their return on or before the automatic extended due date, which is six months after the original filing due date. (R&TC, § 18567.) However, if the return is not filed within six months of the original due date, no extension is allowed. (Cal. Code Regs., tit. 18, § 18567(a).)

R&TC section 19131(a) imposes a late filing penalty when a taxpayer fails to file a return by either the due date or the extended due date unless it is shown that the failure was due to reasonable cause and not willful neglect. The late filing penalty is calculated at 5 percent of the

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<sup>2</sup> In response to COVID-19, FTB postponed to May 17, 2021, the 2020 tax filing and payment due dates for individuals. (See <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2021-03-state-tax-deadline-for-individuals-postponed-until-may-17-2021.html>.) FTB's postponement did not change the original due date of the 2020 returns and the extension to timely file expired on October 15, 2021. (*Appeal of Bannon*, 2023-OTA-096P.)

tax due for each month or fraction thereof that the return is late, with a maximum penalty of 25 percent of the tax.

When FTB imposes a late filing penalty, the law presumes that the penalty was properly imposed, and the burden of proof is on the taxpayer to show reasonable cause for the late filing of the return. (*Appeal of Cremel and Koepfel*, 2021-OTA-222P.) To establish reasonable cause, the taxpayer must provide credible and competent evidence establishing that the failure to timely file a return occurred despite the exercise of ordinary business care and prudence. (*Ibid.*)

Each taxpayer has a personal, non-delegable obligation to file a tax return by the due date. (*United States v. Boyle* (1985) 469 U.S. 241, 252 (*Boyle*)). A taxpayer may reasonably rely on an accountant or attorney for substantive advice on a matter of tax law, such as whether a liability exists. (*Id.* at p. 251.) However, reliance on an agent to timely file a tax return is not reliance on substantive advice, because one does not have to be a tax expert to know that tax returns have fixed filing dates. (*Id.* at p. 251.) A taxpayer's reliance on an agent to timely file a tax return, including an electronically filed return, does not constitute reasonable cause for the late filing of a return. (*Id.* at p. 252; *Appeal of Fisher*, 2022-OTA-337P.) In the absence of an acknowledgment that a return was transmitted, received, or accepted, an ordinarily intelligent and prudent businessperson would view the e-file History and acknowledgment records to confirm that a return was timely transmitted, received and accepted. (*Appeal of Quality Tax & Financial Services, Inc.*, 2018-OTA-130P (*Quality Tax*)). Moreover, after viewing the e-file history and acknowledgment records and noticing that FTB had not accepted a return, an ordinarily intelligent and prudent businessperson would take corrective action to ensure that the return was filed prior to the end of the extension period. (*Ibid.*)

Here, appellants' 2020 return was untimely filed on January 27, 2022. Appellants do not assert that the maximum late filing penalty of 25 percent was imposed or calculated in error. Rather, appellants argue that their circumstances show reasonable cause for the late filing of their 2020 return. First, appellants contend that they attempted in good faith to timely e-file their 2020 return. However, acting in good faith is insufficient to show reasonable cause; the exercise of ordinary business care and prudence required appellants to personally verify that the return had been successfully transmitted, and when it had not been, to take appropriate corrective action. (*Appeal of Fisher, supra*, citing *Quality Tax, supra*.)

Second, appellants assert that they relied on their CPA's professional competency in FTB's e-filing protocols to timely e-file their 2020 tax return. However, the late filing penalty will not be abated merely by showing that the taxpayer relied upon a return preparer who filed the return late; the taxpayer must rely on the substantive advice of a return preparer concerning a question of law, such as whether a liability exists. (*Boyle, supra*, at p. 252.) There is no merit to appellants' contention that their reliance on a tax professional to electronically file a return constitutes reliance on the tax professional's competency in tax law. Even where a tax return is electronically filed, it requires no special training or effort to ascertain a deadline and make sure it is met. (*Appeal of Fisher, supra*.) No question of law was present in this case.

Further, appellants' reliance on their tax preparer to ensure that their 2020 return was timely electronically filed, when no confirmation of successful electronic filing was received, does not constitute reasonable cause for appellants' late filing of their 2020 return. (See *Appeal of Fisher, supra*.) On appeal, appellants provide an FTB confirmation of a Web Pay payment scheduled on October 15, 2021, as proof of their efforts to timely file their 2020 return, and a California e-file signature authorizations for their CPA dated October 15, 2021. However, the FTB confirmation is neither proof of timely filing nor proof of timely payment. The confirmation merely requests that appellants confirm with their bank that the payment cleared. Concerning the California e-file signature authorization, the fact that appellants timely completed the e-filing authorization does not establish reasonable cause because it does not show that appellants verified that the return had been successfully transmitted. (See *Appeal of Fisher, supra*.)

Appellants argue that neither FTB nor their tax preparer timely notified them that their 2020 return was not successfully electronically filed. Appellants assert that, despite the perfection periods set forth in the IRS and FTB e-file handbooks, which allow taxpayers to retransmit rejected returns and have them considered timely filed, they did not receive such notice with respect to their 2020 return and were thus unable to retransmit it in a timely manner. On appeal, appellants provide a 2020 Activity Report from their tax filing software that includes entries on October 15, 2021, and October 16, 2021, showing e-filing rejections by FTB. Although these rejection messages were first available for viewing on October 15, 2021, and October 16, 2021, respectively, appellants state that their CPA discovered the e-filing rejections only on February 14, 2022, after receiving FTB's notice. Thus, the record shows that appellants

would have known that their 2020 return was not successfully filed if they had timely reviewed their tax filing software. While there is no evidence of willful neglect, there is no evidence to support a finding that appellants acted with ordinary business care and prudence.<sup>3</sup>

Lastly, appellants argue that, because FTB rejected the electronic filing of their 2020 return due to their tax preparer's incorrect entry of appellant P. Johnston's personal identification number on appellants' federal return, the federal standards for reasonable cause abatement set forth in IRS Publication 1586, *Reasonable Cause Regulations and Requirements for Missing and Incorrect Name/TINS on Information Returns*, should apply to their California return.<sup>4</sup> IRS Publication 1586 applies to informational return documents (such as Form 1099-B, *Proceeds from Broker and Barter Exchange Transactions*) where the tax identification number is missing or the payor entered the wrong tax identification number. Here, however, appellants' 2020 return was not an information return, and it was not missing a tax identification number (*i.e.*, either appellant's social security number); rather, it was missing a personal identification number. Appellants have not shown that Publication 1586 applies to their 2020 return filing. Further, IRS Publication 1586 is not California law and OTA has no basis to apply it here.

Issue 2: Whether appellants are entitled to interest abatement.

Interest must be assessed from the date a tax payment is due through the date that it is paid. (R&TC, § 19101(a).) Imposing interest is mandatory; it is not a penalty, but it is compensation for appellants' 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. (*Ibid.*) To obtain relief from interest, appellants must qualify under R&TC section 19104 or 21012.<sup>5</sup> (*Ibid.*) Appellants do not allege, and the evidence does not show that either statutory provision for interest abatement apply to the facts of this appeal. R&TC section 19104 does not apply here because appellants do not allege, and the evidence does not show that the interest is

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<sup>3</sup> Appellants assert that due to a change of address, appellant K. Tse did not timely receive a paper copy of their 2020 return, which resulted in additional filing delays and failure to meet the deadline to retransmit the electronic filing and have it considered a timely filing. However, a delay in the receipt of a paper copy of a return does not demonstrate reasonable cause for the late electronic filing of a return, because it does not show what, if any, appropriate corrective action was taken. (See *Appeal of Fisher*, *supra*.)

<sup>4</sup> Appellants have not argued that the IRS imposed any federal late filing penalty or subsequently abated it, and provide no evidence to support any such claim.

<sup>5</sup> Under R&TC section 19112, FTB may waive interest for any period for which FTB determines that an individual or fiduciary is unable to pay interest due to extreme financial hardship. OTA does not have authority to review FTB's denial of a request to waive interest under R&TC section 19112. (*Appeal of Moy*, *supra*.)


attributable, in whole or in part, to any unreasonable error or delay by an FTB employee. R&TC section 21012 does not apply because FTB did not provide appellants with any requested written advice. Therefore, FTB properly imposed interest and OTA has no basis to abate it.

HOLDINGS

1. Appellants have not shown reasonable cause for the late filing of their 2020 tax return.
2. Appellants are not entitled to interest abatement.

DISPOSITION

FTB's action denying appellants' claim for refund is sustained.

DocuSigned by:  
  
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Asaf Kletter  
Administrative Law Judge

Date Issued: 9/20/2023