



### FACTUAL FINDINGS

1. Appellant hired a tax return preparer (Agent) to prepare and file his 2020 California income tax return (Return).
2. In 2022, appellant discovered that the Return had not yet been filed, and appellant untimely filed the Return on April 1, 2022.
3. FTB processed the Return and issued a Notice of Tax Return Change – Revised Balance, which, as relevant here, assessed a late-filing penalty of \$7,866.25.
4. Appellant paid the balance due for the 2020 tax year and filed a claim for refund seeking abatement of the late-filing penalty.
5. FTB denied appellant’s refund claim because it determined that the information appellant provided did not constitute reasonable cause for waiving the late-filing penalty.
6. This timely appeal followed.

### DISCUSSION

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.) 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; Cal. Code Regs., tit. 18, § 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).)<sup>4</sup>

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. 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.*)

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<sup>4</sup> In response to COVID-19, pursuant to R&TC section 18572(b), FTB postponed to May 17, 2021, the 2020 individual tax filing and payment due dates. (See <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2021-03-state-tax-deadline-for-individuals-postponed-until-may-17-2021.html>; IRS Notice 2021-21.) FTB’s postponement did not change the original due date for the 2020 returns, upon which the automatic six-month extension to file was based, and the extension expired on October 15, 2021. (*Appeal of Bannon*, 2023-OTA-096P.)

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. (*Ibid.*) 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.)

Here, appellant's Return was untimely filed on April 1, 2022, when it was due on May 17, 2021. Appellant asserts no error in FTB's calculation of the penalty. Rather, appellant contends that the penalty should be abated for reasonable cause because he relied upon Agent to timely file the Return. Appellant asserts that his reliance upon Agent to file the Return was reasonable because Agent was an employee of a reputable, nationwide tax preparation company, Agent was provided with the information necessary to file the Return, Agent had timely filed appellant's prior year California income tax returns, and Agent assured appellant that the Return would be timely filed. Appellant also asserts that he repeatedly followed up with Agent prior to the deadline and Agent orally confirmed that the Return was filed.

However, the law is clear: the fact that a tax preparer such as Agent was expected to attend to a matter does not relieve a taxpayer of the duty to file the Return by the deadline, and an agent's failure to file a tax return cannot constitute reasonable cause for the taxpayer. (*Boyle, supra*, at p. 252; *Appeal of Fisher, supra*.) Appellant cites to *Appeal of Moren*, 2019-OTA-176P, but that appeal is distinguishable because, here, appellant lacked no information to complete a return. Appellant's claim that *Boyle* is inapplicable because appellant's returns were more complex to prepare is without merit because the relevant action is meeting the statutory deadline by filing the tax return, not preparing it. (*Boyle, supra*, at pp. 249-250; *Appeal of Fisher, supra*.) Moreover, the exercise of ordinary business care and prudence requires a taxpayer to do more than merely delegate or perform the tasks necessary to file a return; he or she must also personally verify that the return was successfully filed, and when it had not been, to take appropriate corrective action. (*Appeal of Fisher, supra*.) Appellant claims that he acted under the Agent's assurances, but he fails to show that he personally verified that the Return was filed.

Appellant claims that he never intended to pay or file late and immediately took steps to have the Return filed promptly upon discovering Agent’s error. However, acting in good faith is insufficient to show reasonable cause; the exercise of ordinary business care and prudence required appellant 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.*)

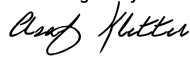
Accordingly, appellant has not shown reasonable cause to abate the late-filing penalty.

HOLDING


The late-filing penalty should not be abated.


DISPOSITION

FTB’s action is sustained in full.

DocuSigned by:  
  
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Asaf Kletter  
Administrative Law Judge

We concur:

DocuSigned by:  
  
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Andrew Wong  
Administrative Law Judge

DocuSigned by:  
  
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Lissett Cervantes  
Senior Legal Typist, on behalf of  
Eddy Y.H. Lam  
Administrative Law Judge

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