

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
P. GOEL AND) OTA Case No. 230212526
N. GOEL)
_____)

OPINION

Representing the Parties:

For Appellants: P. Goel
N. Goel

For Respondent: Sarah Fassett, Attorney
Jaclyn N. Zumaeta, Assistant Chief Counsel

For Office of Tax Appeals: Steven Kim, Attorney

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, P. Goel and N. Goel (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$15,145.50,¹ plus applicable interest, for the 2019 taxable year.

Office of Tax Appeals (OTA) Administrative Law Judges Teresa A. Stanley, Lauren Katagihara, and Asaf Kletter held an oral hearing for this matter in Cerritos, California, on February 14, 2024. At the conclusion of the hearing, OTA closed the record, and this matter was submitted for an opinion.

ISSUE

Have appellants established reasonable cause to abate the late-filing penalty for the 2019 taxable year?

¹ At the oral hearing, appellants testified that the penalty was \$15,206.50. The record reflects that the late-filing penalty was \$15,145.50, and the amount noted by appellants includes a self-assessed penalty of \$61 for underpayment of estimated tax.

FACTUAL FINDINGS

1. On January 29, 2021, appellants untimely filed a California Resident Income Tax Return for the 2019 taxable year, reporting an overpayment of \$553. Appellants self-assessed an estimated tax penalty of \$61 and requested a refund of \$492.
2. Based on unreported capital gains received by appellants in 2019, FTB issued appellants a Notice of Proposed Assessment proposing additional tax of \$61,135, a late-filing penalty of \$15,145.50, and applicable interest.²
3. Appellants made payments that satisfied their outstanding balance. FTB incorrectly allocated some payments to another taxable year and has agreed to refund to appellants \$309.01 in overpaid interest when this appeal becomes final.
4. Appellants filed a claim for refund of the late-filing penalty.
5. FTB issued a Notice of Action denying appellants' claim for refund.
6. Appellants filed this timely appeal with OTA.

DISCUSSION

California imposes a penalty for failure to file a return on or before the due date, unless it is shown that the failure is due to reasonable cause and not due to willful neglect. (R&TC, § 19131(a).) FTB's imposition of a penalty is presumed correct, and the burden of proof is on the taxpayer to overcome the presumption by providing credible and competent evidence supporting a claim of reasonable cause. (*Appeal of Xie*, 2018-OTA-076P.) To establish reasonable cause, the taxpayer must show that the failure to timely file a return occurred despite the exercise of ordinary business care and prudence. (*Appeal of Belcher*, 2021-OTA-284P.)

Here, appellants' 2019 tax return was due on January 15, 2021.³ Appellants argue that they timely filed their tax return on December 14, 2020, because they signed a California e-file

² It is unclear from OTA's record how FTB discovered the capital gains information and how appellants were informed of such. However, neither party disputes the calculation of the additional tax. Only the late-filing penalty is at issue here.

³ In response to the COVID-19 pandemic, FTB postponed the original due date to file tax returns for individuals for the 2019 taxable year from April 15, 2020, to July 15, 2020. (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>.) Additionally, because appellants lived in a county affected by a wildfire disaster, the deadline to file a 2019 tax return was extended to January 15, 2021. (See also <https://www.ftb.ca.gov/about-ftb/newsroom/tax-news/november-2020/more-information-on-wildfire-disaster-relief.html>.)

Signature Authorization for Individuals form (e-file authorization)⁴ on December 14, 2020.

However, OTA's record reflects that appellants untimely filed their tax return on January 29, 2021. Therefore, FTB properly imposed a late-filing penalty, and the burden shifts to appellants to establish reasonable cause to abate the penalty.

Appellants argue that their tax preparer had physical maladies in fall of 2020 and was not able to complete and file their 2019 tax return until December 14, 2020. Appellants testified at the oral hearing that they had no reason to believe their tax return was not timely filed on December 14, 2020, when they signed the e-file authorization. Appellants believed that the return was timely filed before the extended due date of January 15, 2021. Appellants assert that the late-filing penalty should not be imposed on them based on their tax preparer's negligence or mistake. Appellants claim they made numerous efforts to contact their tax preparer, but that he was unresponsive. Appellants further contend that the penalty is excessive, unfair, wrong, and would impose a financial hardship on them. Appellants also assert that they have filed timely tax returns for 40 years.

Appellants have not explained how their tax preparer's maladies caused the return to be filed after the extended filing date of January 15, 2021. Nor do appellants explain what steps they took, if any, to ensure the return was actually filed after they signed the e-file authorization. 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 clerical act does not excuse a late filed return. (*U.S. v. Boyle*, 469 U.S. 241, 250; *Appeal of Quality Tax & Financial Services, Inc.*, 2018-OTA-130P.) “[T]he fact that appellants relied on their tax preparer to file their return does not relieve them of their responsibility to ensure that it is timely filed.” (*Appeal of Fisher*, 2022-OTA-337P.) “[E]xercise of ordinary business care and prudence required appellants to do more than merely perform and/or delegate the tasks necessary to timely file the return. It also required appellants to personally verify the return had been successfully transmitted, and when it had not been, to take appropriate corrective action.” (*Ibid.*)

⁴ The e-file authorization does not cause the tax return to be filed. It only authorizes an electronic return originator, such as appellants' tax preparer, to enter taxpayers' personal identification numbers on a tax return when it is filed.

With respect to appellants' additional arguments, OTA's role is limited to determining whether the late-filing penalty was properly imposed, and if so, whether appellants have established there was reasonable cause for filing late. Appellants have not established reasonable cause, and therefore OTA has no basis to abate the late-filing penalty. Furthermore, OTA may not abate the late-filing penalty for the 2019 taxable year based on appellants' timely filing history.⁵

Lastly, appellants request that OTA at least refund interest, which they claim is also excessive.⁶ Interest must be assessed from the date a tax payment is due through the date that it is paid. (R&TC, § 19101.) Imposition of 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.) Waiver of interest may be available to taxpayers under certain circumstances, but none are present in this appeal. (See R&TC §§ 19104, 19112, 21012.)

Based on the foregoing, appellants have not shown reasonable cause to abate the late-filing penalty.

⁵ R&TC section 19132.5(a), which allows a one-time abatement of a timeliness penalty based on a taxpayer's history of timeliness, is effective only for taxable years beginning on or after January 1, 2022. As the 2019 taxable year is at issue here, this newly enacted law is inapplicable.

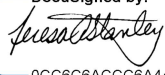
⁶ At the oral hearing, appellants testified that they paid \$3,849.16 in interest on the late-filing penalty. OTA's record reflects that the aforementioned interest was related to the additional tax of \$61,135 as well as to the amount of the late-filing penalty.

HOLDING

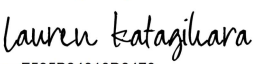
Appellants have not established reasonable cause to abate the late-filing penalty for the 2019 taxable year.


DISPOSITION

Except for FTB’s concession to refund to appellants interest of \$309.01, FTB’s action denying their claim for refund is sustained.

DocuSigned by:

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Teresa A. Stanley
Administrative Law Judge

We concur:

DocuSigned by:

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Lauren Katagihara
Administrative Law Judge

DocuSigned by:

D17AEDDCAAB045B
Asaf Kletter
Administrative Law Judge

Date Issued: 4/22/2024