

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

In the Matter of the Appeal of: ) OTA Case No. 230713910  
J. ZIEMANN AND )  
J. RHODES )  
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**OPINION**

Representing the Parties:

For Appellants: Elizabeth Mitchell

For Respondent: Camille Dixon, Attorney

For Office of Tax Appeals: Nguyen Dang, Attorney

L. KATAGIHARA, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. Ziemann and J. Rhodes (appellants) appeal actions by the Franchise Tax Board (respondent) denying appellants’ claims for refund of \$19,153.81 and \$47,135.50 for the 2020 and 2021 tax years, respectively.

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

**ISSUES**

1. Whether appellants have established a basis to abate the late-payment penalty.
2. Whether appellants have established a basis to abate the late-filing penalty.

## FACTUAL FINDINGS

### 2020 Tax Year

1. On May 11, 2021, prior to the payment deadline,<sup>1</sup> appellants attempted to make an electronic return payment for their 2020 tax year liability. This attempt was unsuccessful because the payment did not include the correct bank account information.
2. On July 14, 2021, respondent notified appellants of a balance due for the 2020 tax year and imposed a late-payment penalty.
3. Appellants paid the balance due and filed a refund claim seeking abatement of the late-payment penalty.
4. Respondent denied the claim.

### 2021 Tax Year

5. Appellants' extension payment was insufficient to cover their 2021 tax liability.
6. Appellants untimely filed their 2021 California income tax return (Return) on December 14, 2022.
7. Respondent imposed a late-filing penalty.
8. Appellants paid the balance due and filed a refund claim seeking abatement of the late-filing penalty.
9. Respondent denied the claim.
10. Appellants timely appealed respondent's claim denials for the 2020 and 2021 tax years.

## DISCUSSION

### Issue 1: Whether appellants have established a basis to abate the late-payment penalty.

Appellants do not dispute the imposition or computation of the late-payment penalty. Instead, appellants ask that the penalty be abated because their former CPA negligently failed to timely pay their 2020 tax liability. According to appellants, the CPA entered incorrect bank account information when making the May 11, 2021 electronic payment. Appellants assert that they, however, acted in good faith and exercised ordinary business care and prudence. In support of that contention, appellants point to their payment upon receipt of respondent's notice of a

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<sup>1</sup> Due to the COVID-19 pandemic, respondent postponed the filing and payment deadlines to May 17, 2021.

balance due, a California e-file authorization form dated May 10, 2021, and reports (presumably from their former CPA's tax software) showing that their 2020 tax liability was scheduled to be debited on May 17, 2021, and that their 2020 California income tax return was transmitted to and accepted by respondent on May 11, 2021.

The late-payment penalty may be abated if the failure to timely pay was due to reasonable cause and not willful neglect. (R&TC, § 19132(a)(1).) To establish reasonable cause for abating the penalty, taxpayers must show that the failure to timely pay occurred despite the exercise of ordinary business care and prudence. (*Appeal of Scanlon*, 2018-OTA-075P.)

As a general principle, taxpayers have a non-delegable duty to ensure that a timely payment is made. (*Baccei v. U.S.* (9th Cir. 2011) 632 F.3d 1140, 1148-1149.)<sup>2</sup> This means that regardless of any alleged negligence on the part of their former CPA in effectuating appellants' return payment, appellants cannot escape responsibility for failing to perform what is a non-delegable duty. (*Conklin Brothers of Santa Rosa, Inc. v. U. S.* (9th Cir. 1993) 986 F.2d 315, 317-318.)

In addition, taxpayers do not exercise ordinary business care and prudence when they fail to monitor their bank account to ascertain whether a scheduled electronic payment was successful. (*Appeal of Scanlon, supra.*) It appears from the record that appellants did not take the reasonable and prudent step of verifying that their payment was successful, but instead relied entirely on their former CPA to effectuate the payment.

Accordingly, appellants have not shown reasonable cause for abating the late-payment penalty.

Issue 2: Whether appellants have established a basis to abate the late-filing penalty.

Appellants do not dispute that the Return was untimely filed or that respondent properly calculated the amount of the penalty. Rather, appellants request that the penalty be abated due to reasonable cause. Specifically, appellants contend they exercised ordinary business care and prudence by relying on their former CPA to timely file the Return and accurately compute appellants' extension payment. Appellants assert that they were unable to confirm with their

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<sup>2</sup> Because the language of R&TC section 19132 pertaining to the reasonable cause exception is patterned after Internal Revenue Code section 6651, the federal courts' interpretation of the reasonable cause standard is persuasive authority in determining the proper construction of the California statute. (See *Andrews v. Franchise Tax Bd.* (1969) 275 Cal.App.2d 653, 658; *Rihn v. Franchise Tax Bd.* (1955) 131 Cal.App.2d 356, 360.)

former CPA whether the Return had been timely filed, and that the penalty was the result of their former CPA erroneously computing their extension payment.

The late-filing penalty shall not apply if the late filing was due to reasonable cause and not willful neglect. (R&TC, § 19131(a).) 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 Quality Tax & Financial Services, Inc.*, 2018-OTA-130P.) Unsupported assertions are insufficient to satisfy the taxpayer's burden. (*Appeal of Xie*, 2018-OTA-076P.) Moreover, it is well settled that a taxpayer's reliance upon an agent to file a return by the due date does not constitute reasonable cause for abating the penalty, as taxpayers have a non-delegable obligation to ensure that a return is filed on time. (*Appeal of Quality Tax & Financial Services, Inc.*, *supra.*)

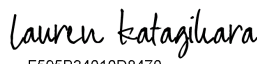
The exercise of ordinary business care and prudence required appellants to do more than merely delegate the tasks necessary to file the Return. (See *Appeal of Quality Tax & Financial Services, Inc.*, *supra.*) It also required appellants, prior to the filing deadline, to personally verify that the Return was filed, and if not, to take the necessary corrective actions to ensure that the Return would be timely filed. (*Ibid.*) Appellants did not exercise ordinary business care and prudence when they failed to make alternative arrangements to have the Return filed prior to the filing deadline, despite admittedly having received no indication that the Return had been filed. Finally, appellant's assertion that their former CPA inaccurately calculated appellant's extension payment is unsupported and thus, cannot establish reasonable cause. (See *Appeal of Xie*, *supra.*) Therefore, appellants have not shown reasonable cause for abating the penalty.

HOLDINGS

1. Appellants have not established a basis to abate the late-payment penalty.
2. Appellants have not established a basis to abate the late-filing penalty.


DISPOSITION

Respondent’s actions are sustained.

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 Lauren Katagihara  
 Administrative Law Judge

We concur:

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 Administrative Law Judge

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 Veronica I. Long  
 Administrative Law Judge

Date Issued: 7/3/2024