

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)	OTA Case No. 230814164
M. LACHTMAN)	
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OPINION

Representing the Parties:

For Appellant: M. Lachtman

For Respondent: Noel Garcia-Rosenblum, Attorney

S. ELSOM, Hearing Officer: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. Lachtman (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant's claim for refund of \$4,106.25 plus applicable interest for the 2021 tax year.

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

ISSUE

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

FACTUAL FINDINGS

1. On March 15, 2023, appellant untimely filed his 2021 California individual income tax return, reporting total tax of \$35,425, estimated tax payments totaling \$19,000, and tax due of \$16,425.
2. On March 23, 2023, respondent issued a Notice of Tax Return Change to appellant imposing a late filing penalty of \$4,106.25, and interest of \$680.37.
3. On April 6, 2023, and June 15, 2023, appellant made payments of \$21,211.62 and \$36, respectively. On May 3, 2023, respondent credited \$6 from appellant's 2022 tax year account to the 2021 tax year, satisfying the balance due for appellant's 2021 tax year.

4. On May 11, 2023, respondent received appellant's claim for refund requesting abatement of the late filing penalty and applicable interest totaling \$4,786.62,¹ due to reasonable cause.
5. On July 18, 2023, respondent denied appellant's claim for refund. This timely appeal followed.

DISCUSSION

A late filing penalty is imposed when a taxpayer fails to file a tax return on or before its due date, unless the taxpayer establishes that the late filing was due to reasonable cause and was not due to willful neglect. (R&TC, § 19131(a).) When respondent imposes a late filing penalty, the law presumes that the penalty was imposed correctly. (*Appeal of Xie*, 2018-OTA-076P.) The burden of proof is on the taxpayer to show, by providing credible and competent evidence, that reasonable cause exists to support abating the penalty. (*Ibid.*) To establish reasonable cause, a taxpayer must show that the failure to file a timely return occurred despite the exercise of ordinary business care and prudence, or that an ordinarily intelligent and prudent businessperson would have so acted under similar circumstances. (*Appeal of Belcher*, 2021-OTA-284P.) If the taxpayer establishes reasonable cause, the penalty may be abated. (R&TC, § 19131(a).)

Appellant does not challenge the computation or imposition of the late filing penalty. Rather, appellant makes reasonable cause type arguments to support his request to abate the late filing penalty. Specifically, appellant asserts that on October 10, 2021,² appellant authorized his tax preparer to e-file his 2021 California income tax return, but the tax preparer “forgot” to timely file appellant's tax return due to extremely high employee turnover which caused the tax preparer to become overwhelmed with tax filings for other taxpayers. Appellant further asserts that he did not discover that his 2021 California income tax return had not been filed until

¹ The claim for refund includes the late filing penalty of \$4,106.25, and interest of \$721.45, which total \$4,827.70. This is \$0.08 more than the amount listed by appellant in his claim for refund (\$4,786.62). The minor difference is not explained and does impact the outcome of this appeal.

² Although appellant states he signed the e-file authorization form on October 10, 2021, it appears that appellant may have made an error as this date is prior to the end of the 2021 tax year. Appellant may have intended to state October 10, 2022, which is after the end of the 2021 tax year, and shortly before the October 15, 2022 extended filing deadline for the 2021 tax year.

March 15, 2023, when appellant's tax preparer informed appellant that the 2021 return had not been filed.

Appellant's reliance on his tax preparer to timely file appellant's 2021 California income tax return does not establish reasonable cause. Instead, every taxpayer has a personal, non-delegable obligation to ensure the timely filing of a tax return by the due date. (*U.S. v. Boyle* (1985) 469 U.S. 241, 251-252; *Appeal of Fisher*, 2022-OTA-337P.) Appellant's reliance on his tax preparer to file his return does not relieve appellant of his responsibility to ensure that it is timely filed. (*Appeal of Fisher, supra.*) The exercise of ordinary business care and prudence required appellant to do more than merely perform and/or delegate the tasks necessary to timely file the return. (*Ibid.*) Appellant was also required to personally verify that the return had been successfully filed, and when it had not been, to take appropriate corrective action. (*Ibid.*) Appellant has not produced correspondence between himself and respondent, or any other information to prove that he acted as a prudent businessperson would to confirm the filing of his tax return before the extended filing deadline of October 15, 2022. As a result, appellant does not meet his burden of proof to establish reasonable cause for the abatement of the late filing penalty.

Finally, appellant requests that the Office of Tax Appeals consider appellant's history of timely filing California income tax returns and requests first-time abatement of the late filing penalty. R&TC section 19132.5 allows for the one-time abatement of an individual's timeliness penalty. However, this section only applies to tax years beginning on or after January 1, 2022. (R&TC, § 19132.5(f).) As such, it is not applicable to the late filing penalty imposed here for the 2021 tax year.

HOLDING

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

DISPOSITION

Respondent's action denying appellant's claim for refund is sustained.

Signed by:

Seth Elsom

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Seth Elsom
Hearing Officer

We concur:

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Steven Kim

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Steven Kim
Administrative Law Judge

DocuSigned by:

Cheryl Akin

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Cheryl L. Akin
Administrative Law Judge

Date Issued: 8/13/2024