

**OFFICE OF TAX APPEALS
 STATE OF CALIFORNIA**

In the Matter of the Appeal of: S. LIM AND D. WONG)))))	OTA Case No. 231014571
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OPINION

Representing the Parties:

For Appellants:	Stephen Ho, CPA
For Respondent:	AnaMarija Antic-Jezildzic, Specialist

V. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, S. Lim and D. Wong (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$3,634.50 for the 2020 tax year.

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

ISSUE

Whether appellants have demonstrated reasonable cause to abate the late filing penalty.

FACTUAL FINDINGS

1. On July 29, 2021, appellants’ return preparer attempted to electronically file appellants’ 2020 California income tax return (“return”), but the return was rejected.
2. On August 31, 2022, FTB issued appellants a Payment Received - No Return on File notice. After receiving no response, FTB issued appellants a Request for Tax Return.
3. On March 15, 2023, appellants filed their 2020 return. FTB processed the return and imposed a late filing penalty.
4. Appellants paid the penalty and filed a claim for refund requesting abatement of the late filing penalty. FTB denied appellants’ claim for refund.
5. This appeal follows.

DISCUSSION

California imposes a penalty for the 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.) When FTB imposes a penalty, the law presumes that the penalty was imposed correctly, and the burden of proof is on the taxpayers to establish otherwise. (*Appeal of Fisher*, 2022-OTA-337P.) To overcome the presumption of correctness attached to the penalty, taxpayers must provide credible and competent evidence supporting a claim of reasonable cause; otherwise, the penalty cannot be abated. (*Ibid.*) To establish reasonable cause, taxpayers must show that the failure to file a timely return occurred despite the exercise of ordinary business care and prudence, or that cause existed as would prompt an ordinarily intelligent and prudent businessperson to have so acted under similar circumstances. (*Ibid.*)

It is well-established that each taxpayer has a personal, non-delegable obligation to ensure the timely filing of a return, and thus, reliance on an agent to perform this act does not constitute reasonable cause to abate a late filing penalty. (*Appeal of Fisher, supra.*) A taxpayer who claims to have timely mailed a return must show evidence, such as a registered or certified mail receipt, that the return was timely filed with FTB. (*Ibid.*) Taxpayers claiming to have timely electronically filed a return must provide similar evidence of having submitted a return to FTB. (*Ibid.*) A tax preparer's statement that he or she did not receive confirmation of filing from tax preparation software does not meet this evidentiary burden. (*Ibid.*)

Appellants do not dispute the computation or imposition of the late filing penalty but contend that it should be abated because their return preparer attempted to electronically file their return on July 29, 2021. When the electronic filing failed, appellants mailed a paper copy of the return to FTB. However, this paper filing was not submitted to FTB until March 15, 2023. Appellants do not dispute this date or explain why it took a year and seven months to file a paper copy of their return after the electronic filing failed. The exercise of ordinary business care and prudence required appellants to do more than merely delegate the filing to their return preparer; it requires appellants to personally verify the return was successfully transmitted and, where it has not been, to take appropriate corrective actions. (*Appeal of Fisher, supra.*) Accordingly, appellants have not established reasonable cause to abate the late filing penalty.

HOLDING

Appellants have not demonstrated reasonable cause to abate the late filing penalty.

DISPOSITION

FTB’s action is sustained.

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Veronica I. Long
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Veronica I. Long
Administrative Law Judge

We concur:

DocuSigned by:
Sara A. Hosey
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Sara A. Hosey
Administrative Law Judge

DocuSigned by:
Huy "Mike" Le
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Huy "Mike" Le
Administrative Law Judge

Date Issued: 7/24/2024