

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 220911286  
W. HEIMAN )  
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**OPINION**

Representing the Parties:

For Appellant: W. Heiman

For Respondent: David Muradyan, Attorney

J. LAMBERT, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, W. Heiman (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$7,545.50 for the 2019 tax year.<sup>1</sup>

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

**ISSUE**

Whether appellant has established a basis to abate the late filing penalty.

**FACTUAL FINDINGS**

1. Appellant untimely filed his 2019 tax return on May 25, 2021.
2. FTB issued a Notice of Tax Return Change - Revised Balance, which imposed a late filing penalty of \$7,545.50, plus applicable interest.
3. Appellant paid the balance due.
4. Appellant filed a claim for refund with FTB for the penalty, which FTB denied.
5. Appellant filed this timely appeal.

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<sup>1</sup> Appellant’s claim for refund was for the amount of \$7,707.91, which included a late filing penalty of \$7,545.50, plus adjustments for interest and payments. FTB denied appellant’s claim for refund in the amount of \$7,545.50 as to the penalty. Appellant makes no arguments as to the abatement of interest and, therefore, interest will not be addressed.

## DISCUSSION

California imposes a penalty for the failure to file a return on or before the due date, unless it is shown that the late filing was due to reasonable cause and not due to willful neglect. (R&TC, § 19131(a).) 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 such cause existed as would prompt an ordinarily intelligent and prudent businessperson to have so acted under similar circumstances. (*Appeal of Fisher*, 2022-OTA-337P.) When FTB imposes a penalty, the law presumes that the penalty was correctly imposed, and the burden of proof is on the taxpayer to establish otherwise. (*Ibid.*)

Reasonable cause is established when a taxpayer shows reasonable reliance on the advice of an accountant or attorney that it was unnecessary to file a return, even when such advice turned out to have been mistaken. (*U.S. v. Boyle* (1985) 469 U.S. 241, 250 (*Boyle*); *Appeal of Mauritzson*, 2021-OTA-198P.) When an accountant or attorney advises a taxpayer on a substantive matter of tax law, such as whether a liability exists, it is reasonable for the taxpayer to rely on that advice. (*Boyle, supra*, 469 U.S. at p. 251.) However, that reliance cannot function as a substitute for compliance with an unambiguous tax statute regarding filing deadlines. (*Ibid.*) This is because taxpayers have a personal and nondelegable duty to file a return on time. (*Id.* at p. 247.)

Due to the COVID-19 pandemic, FTB postponed the filing deadline for the 2019 tax year to July 15, 2020.<sup>2</sup> Appellant's return was filed late on May 25, 2021. Therefore, the late filing penalty was properly imposed.

Appellant argues there is reasonable cause for the late filing of the return because his accountant had health issues during the COVID-19 pandemic, which prevented him from timely filing appellant's 2019 return. Appellant also contends that his accountant told him that he did not owe any tax and that the return was filed. Appellant asserts that he reached out to the accountant several times after the due date to get a copy of the allegedly filed return. Appellant asserts that, when he discovered the return was not filed, he hired a new accountant and filed the return.

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<sup>2</sup> <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>.

Appellant also asserts that his return was late due to complications with the filing of the tax return for Wilmore Holdings Inc., an S corporation that he owned and from which he received income. Appellant contends that the accountant did not file a correct form for the entity, which resulted in the entity being incorrectly classified as a C corporation. Appellant also contends there were difficulties in operating his business due to the COVID-19 pandemic. For these reasons, appellant asserts there were delays in filing the return for the entity, which caused the delay in the filing of his 2019 personal return.

As to appellant's assertions that he relied on his previous accountant to timely file his return, reasonable cause is not established by such reliance because taxpayers have a personal and nondelegable duty to file a return on time. (*Boyle, supra*, 469 U.S. at p. 247.) In addition, no evidence has been provided as to any advice given to appellant by his previous accountant as to a matter of substantive tax law, any communications between him and his accountant, or the alleged complications that resulted in the late filing, such as waiting on information from Wilmore Holdings Inc. Furthermore, taxpayers have an obligation to file timely returns with the best available information, and to then subsequently file an amended return, if necessary, and difficulty in obtaining information does not constitute reasonable cause for the late filing of a return. (*Appeal of Xie*, 2018-OTA-076P.)

Appellant states that "October 15th 2020 came around and [his accountant] had not produced the proof that he had filed the return. By then [appellant] suspected something was very wrong and decided to replace [his accountant]." OTA notes that by the time appellant asserts he took steps to find another accountant, the return was already late. In addition, appellant has not shown that he exercised ordinary business care and prudence by taking steps to ensure that his return was timely filed, such as by retaining another accountant before the due date to prepare his return after his accountant failed to respond with proof the return was completed and filed. Therefore, appellant has not shown reasonable cause for the late filing of the return.

Appellant asserts that the IRS abated a similar federal late filing penalty for the 2019 tax year. The record indicates that the IRS abated a federal late filing penalty based on its first time abate program, through which the IRS abates first-time timeliness penalties if a taxpayer has timely filed returns and paid taxes due for the preceding three years. However, California has no

comparable program for the 2019 tax year for abating late filing penalties based solely on a prior good filing history.<sup>3</sup>

HOLDING

Appellant has not established a basis to abate the late filing penalty.

DISPOSITION

FTB’s action is sustained.

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*Josh Lambert*  
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Josh Lambert  
Administrative Law Judge

We concur:

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*John O Johnson*  
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John O. Johnson  
Administrative Law Judge

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*Michael F Geary*  
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Michael F. Geary  
Administrative Law Judge

Date Issued: 7/24/2024

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<sup>3</sup> R&TC section 19132.5(a), effective for taxable years beginning on or after January 1, 2022, allows an individual taxpayer to request a one-time abatement of a timeliness penalty. As the 2019 tax year is at issue here, this newly enacted law is inapplicable.