

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

In the Matter of the Appeal of: )  
N. OAKLEY AND ) OTA Case No. 230613706  
J. OAKLEY )  
\_\_\_\_\_ )

**OPINION**

Representing the Parties:

For Appellants: William R. Soper, CPA

For Respondent: Vivian Ho, Attorney

For Office of Tax Appeals: Louis Ambrose, Attorney

V. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, N. Oakley and J. Oakley (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying their claim for refund of \$3,909.82 for the 2019 tax year.<sup>1</sup>

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 reasonable cause for the late filing of their 2019 tax return.
2. Whether appellants have established a legal basis for abatement of interest.

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<sup>1</sup> Appellants' refund claim states that it is contesting the imposition of a late filing penalty and a late payment penalty, but only a late filing penalty was imposed. The \$3,909.82 amount reflects the late filing penalty and accrued interest on the penalty.

### FACTUAL FINDINGS

1. Appellants untimely filed their 2019 California tax return on April 14, 2021, reporting total tax of \$57,512, withholding of \$26,449 and estimated tax payments of \$46,761. Based on that reporting, appellants claimed an overpayment amount of \$15,698, which they applied to their 2020 estimated tax.
2. On August 23, 2021, FTB notified appellants that according to FTB's records, appellants incorrectly reported their estimated tax payments and extension payments. The notice reflected estimated tax and extension payments of \$31,063,<sup>2</sup> rather than the \$46,761 reported by appellants on the return, and notified appellants of the imposition of a late filing penalty of \$3,575.50 and interest and fees of \$294.83.
3. By letter dated September 14, 2021, appellants requested abatement of the late filing penalty and interest.
4. FTB sent appellants an Income Tax Due Notice dated October 15, 2021, reflecting the late filing penalty and interest. On October 25, 2021, FTB received appellants' second request for abatement of the late filing penalty and interest. In response, FTB sent a Penalty Waiver Denial dated December 20, 2021.
5. In a letter that was received by FTB on August 23, 2022, appellants disputed the denial of their penalty abatement request.<sup>3</sup> As appellants had fully paid the amounts due by that date, FTB treated the letter as a claim for refund and issued a Notice of Action denying the refund claim on April 10, 2023. Appellants then filed this timely appeal.

### DISCUSSION

#### Issue 1: Whether appellants have established reasonable cause for the late filing of their 2019 tax return.

California imposes a penalty for failing to file a return on or before the due date, unless the taxpayer shows that the failure is due to reasonable cause and not due to willful neglect. (R&TC, § 19131.) To establish reasonable cause, the taxpayer must show that the failure to file a timely return occurred despite the exercise of ordinary business care and prudence, or that such

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<sup>2</sup> Appellants' 2019 account ledger showed an extension payment of \$14,302 on September 22, 2020, and an estimated tax transfer of \$16,761 from the 2018 tax year.

<sup>3</sup> Due to an apparent typographical error, the letter bears a date of August 23, 2002.

cause existed as would prompt an ordinarily prudent businessperson to have acted under similar circumstances. (*Appeal of Head and Feliciano*, 2020-OTA-127P.)

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 act does not constitute reasonable cause to abate a late filing penalty. (*U.S. v. Boyle* (1985) 469 U.S. 241, 251-252 (*Boyle*); *Appeal of Quality Tax & Financial Services, Inc.*, 2018-OTA-130P.) In *Boyle*, the executor of an estate relied upon an attorney to timely file an estate tax return. However, due to a clerical error, the attorney did not timely file the return. The U.S. Supreme Court held that:

The duty is fixed and clear; Congress intended to place upon the taxpayer an obligation to ascertain the statutory deadline and then to meet that deadline, except in a very narrow range of situations.

(*Boyle, supra*, 469 U.S. at p. 249.)

Appellants do not dispute the imposition or computation of the late filing penalty but contend that they have demonstrated reasonable cause for penalty abatement. In their appeal letter, appellants reference their penalty abatement request letters in which they stated that the late filing resulted from “complications caused by the pandemic and shelter-in-place ordinances,” and that their CPA was hospitalized on multiple occasions from March 2020, through January 2021.<sup>4</sup> Appellants also assert that the postponed filing deadline for their return was January 15, 2021, because their tax records were maintained by their CPA whose office was located in one of the wildfire disaster areas to which the filing extension period applied.<sup>5</sup>

However, as discussed above, reliance on one’s agent to file a timely tax return does not constitute reasonable cause. (See *Boyle, supra*, at p. 251-252; *Appeal of Quality Tax & Financial Services, Inc., supra*.) The fact that appellants relied on their CPA to file their return does not relieve them of their responsibility to ensure that it is timely filed. An ordinarily

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<sup>4</sup> FTB postponed the due date for 2019 tax returns 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>.) However, appellants’ tax return was not filed until April 14, 2021.

<sup>5</sup> Appellants claim the extension due to California wildfires applies to them because their tax preparer resides in Sonoma County, which is a county affected by the wildfires. However, that relief provision is based on residence of the taxpayer, not the tax preparer. Moreover, even if that extension period was applicable, appellants filed their return on April 14, 2021, which is almost three months after the extended due date of January 15, 2021. (See <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2020-13-additional-tax-relief-for-california-taxpayers-affected-by-september-wildfires.html>.)

intelligent and prudent businessperson would have taken steps, prior to the due date, to find another tax professional to prepare and file the return because their CPA was seriously ill and apparently incapacitated. (*Quality Tax & Financial Services, Inc., supra.*) Because appellants have not shown that they took such steps, they have not shown that the untimely filing occurred despite the exercise of ordinary business care and prudence.

Issue 2: Whether appellants have established a legal basis for abatement of interest.

Imposition of interest is mandatory, and it can only be abated in certain limited situations when authorized by law. (R&TC, § 19101(a); *Appeal of Balch*, 2018-OTA-159P.) There is no reasonable cause exception to the imposition of interest. (*Appeal of Moy*, 2019-OTA-057P.) To obtain relief from interest, a taxpayer must qualify under R&TC sections 19104, 19112, or 21012; however, based on the evidence and appellants' arguments, none of these statutory provisions apply.<sup>6</sup>

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<sup>6</sup> While the amount in dispute includes interest that accrued on the late filing penalty, appellants' appeal letter does not reference any interest abatement provisions or argue that there is a ground for the abatement of interest apart from abating the penalty. The Office of Tax Appeals addresses interest abatement out of caution.

HOLDINGS

1. Appellants have not established reasonable cause for the late filing of their 2019 tax return.
2. Appellants have not established a legal basis for abatement of interest.

DISPOSITION

FTB’s action denying appellants’ claim for refund is sustained.

Signed by:  
  
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Veronica I. Long  
 Administrative Law Judge

We concur:

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 Administrative Law Judge

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Kenneth Gast  
 Administrative Law Judge

Date Issued: 8/21/2024