

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
C. CHAN) OTA Case No. 240716706
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OPINION

Representing the Parties:

For Appellant: Peter Malick, CPA
For Respondent: Vicki M. Leclerc, Specialist
For Office of Tax Appeals: Seth Elsom, Hearing Officer

S. ELSOM, Hearing Officer: Pursuant to Revenue and Taxation Code (R&TC) section 19324 C. Chan (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$3,508.90 for the 2021 tax year.

Appellant elected to have this appeal determined pursuant to the procedures of the Small Case Program. Those procedures require the assignment of a single panel member. (Cal. Code Regs., tit. 18, § 30209.05.) Appellant waived the right to an oral hearing; therefore, the matter was submitted to the Office of Tax Appeals (OTA) on the written record pursuant to California Code of Regulations, title 18, section 30209(a).

ISSUES

1. Has appellant established reasonable cause for the abatement of the late filing penalty?
2. Has appellant established a legal basis for the abatement of interest?

FACTUAL FINDINGS

1. Appellant filed an untimely 2021 California Form 540 income tax return on November 15, 2023, reporting total tax of \$24,964, California income tax withholdings of

- \$15,052 (line 71), California real estate tax withholdings of \$14,153 (line 73), and overpaid tax of \$4,241.
2. Respondent subsequently issued a Notice of Tax Return Change – Revised Balance on November 27, 2023, to reduce appellant’s reported income tax withholdings by \$14,153,¹ and imposed a late filing penalty of \$2,465 plus applicable interest, for a total balance due of \$13,283.94.²
 3. Appellant made payments of \$9,860 and \$3,841.49 on December 12, 2023, and February 12, 2024, respectively, in satisfaction of the balance due.
 4. Appellant subsequently sent a letter to respondent requesting a refund of the late filing penalty and interest, which totaled \$3,508.90.
 5. Respondent denied appellant’s refund on April 24, 2024.
 6. Appellant filed this timely appeal.

DISCUSSION

Issue 1: Has appellant established reasonable cause for the abatement of the late filing penalty?

R&TC section 19131 imposes a late filing penalty where a taxpayer fails to file a return when due, unless the failure is due to reasonable cause and not willful neglect. The penalty is calculated at five percent of the tax liability for each month or fraction thereof the return is past due, up to a maximum of 25 percent. (R&TC, § 19131(a).) When respondent imposes a penalty, the law presumes that it was imposed correctly. (*Appeal of Xie*, 2018-OTA-076P.)

It takes no special skill set or talent to know that there are unambiguous due dates for filing returns. (*Appeal of Mazdyasni*, 2018-OTA-049P.) Each taxpayer has a personal, non-delegable obligation to file a tax return by the due date, and a taxpayer’s reliance on a third party to timely file a return does not constitute reasonable cause for a late filing. (*U.S. v. Boyle* (1985) 469 U.S. 241, 252 (*Boyle*).) To establish reasonable cause, a taxpayer must

¹ Based upon appellant’s W-2 Forms and information obtained from the California Employment Development Department, respondent determined that appellant’s California income tax withholdings totaled \$951. As a result, it appears that appellant’s reported income tax withholdings of \$15,052 on line 71 included real estate withholdings of \$14,153, which were also reported separately as California real estate tax withholdings of \$14,153 on line 73. Respondent’s adjustment removed the double counting of this item.

² Appellant’s balance due is calculated as the sum of appellant’s reported tax liability of \$24,964, plus the late filing penalty of \$2,465, plus accrued interest of \$958.94, less income tax withholdings of \$951 and real estate tax withholdings of \$14,153, which equals \$13,283.94.

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. (*Appeal of Fisher*, 2022-OTA-337P.)

Appellant does not dispute respondent's calculation or imposition of the late filing penalty, but instead asserts reasonable cause to abate it. Appellant's tax preparer provides a letter at appeal that states that he was diagnosed with cancer, and as a result, was unable to file appellant's return by its due date. In the claim for refund, appellant's preparer specifically states, "I was diagnosed with . . . cancer, and had surgery A few tax returns for 2021 did not get filed on time – this is one of those returns."

Appellant filed the 2021 return on November 15, 2023, approximately one year after its extended due date of October 15, 2022. While the tax preparer states that he was diagnosed with cancer shortly before the October 15, 2022 extended filing deadline for the 2021 tax year, appellant does not explain why the return was not filed until more than a year later. OTA concludes that a reasonably prudent businessperson exercising ordinary business care and prudence would have taken steps to ensure that his or her return was timely filed by the tax preparer. While the return preparer states that he was unable to inform clients that their returns were not timely filed, appellant does not describe any efforts made to contact the tax preparer either before, or after, the October 15, 2022 extended filing deadline to ensure that the return was filed. Appellant also does not describe any efforts made to contact respondent to ensure the return was received. Absent such steps, appellant has failed to establish that appellant exercised ordinary business care and prudence to ensure that the return was filed by the due date. Although OTA sympathizes with the tax preparer's medical condition, as stated above, appellant's reliance on a tax preparer to file a return does not establish reasonable cause for filing the 2021 return late. (*Boyle, supra*, 469 U.S. 241, 252; *Appeal of Fisher, supra*.) Based on the reasons stated above, appellant has not established reasonable cause for the late filing of the return.

Issue 2: Has appellant established a legal basis for the abatement of interest?

Interest must be assessed from the date a tax payment is due through the date that it is paid. (R&TC, § 19101.) Interest is not a penalty; it is compensation for the taxpayer's use of money that should have been paid to the state. (*Appeal of Balch*, 2018-OTA-159P.) Imposing

interest is mandatory, and respondent cannot abate interest except where authorized by law. (R&TC, § 19101; *Appeal of Balch, supra.*) Generally, to obtain relief from interest, taxpayers must qualify under R&TC section 19104, 21012, or 19112.³

Appellant does not allege that the statutory provisions for interest abatement referenced above apply to the facts of this case, and OTA concludes based on the evidence in the record that none of these statutory provisions apply. Therefore, respondent properly imposed interest and OTA has no basis to abate it.

HOLDINGS

1. Appellant has not established reasonable cause for the abatement of the late filing penalty.
2. Appellant has not established a legal basis for the abatement of interest.

DISPOSITION

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

Signed by:



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Seth Elsom
Hearing Officer

Date Issued: 11/21/2024

³ Under R&TC section 19104, respondent is authorized to abate or refund interest if there has been an unreasonable error or delay in the performance of a ministerial or managerial act by an employee of respondent. Under R&TC section 21012, an individual may be relieved from interest if that person reasonably relies on respondent's written advice in response to a written request. Under R&TC section 19112, respondent may waive interest for any period for which respondent determines that an individual has extreme financial hardship. However, OTA does not have authority to review extreme financial hardship determinations under R&TC section 19112. (See *Appeal of Moy*, 2019-OTA-057P.)