

) OTA Case No. 230613665

1. On August 31, 2022, respondent informed appellants that it had received their \$40,000 payment for the 2020 tax year, but there was no record of an income tax return filed for that year.
2. On September 23, 2022, appellants jointly filed their California 2020 tax year income tax return (2020 return) self-assessing an underpayment of estimated tax penalty of \$1,511 and reporting an overpayment of \$1,839.

3. On October 31, 2022, respondent issued a Notice of Tax Return Change - Revised Balance to appellants imposing a late-filing penalty of \$12,902.50 and reflecting a balance due, which appellants paid.
4. On February 9, 2023, appellants filed a Reasonable Cause - Individual and Fiduciary Claim for Refund asserting that they believed the 2020 return had been timely filed because their filing software provided an electronic confirmation that the 2020 return had been transmitted to, and received successfully by, Intuit on October 11, 2021, before the expiration of the October 15, 2021 extended filing deadline.
5. On May 9, 2023, respondent issued a letter denying appellants' claim for refund.
6. This timely appeal followed.
7. On appeal, appellants attach death certificates for appellant E. Macasaet's mother and brother, whom appellants explain contracted COVID-19 and passed away during January 2021, before the due date for the 2020 return.
8. Appellants also attach a letter from appellants' physician in which the medical doctor described the insomnia suffered by appellant E. Macasaet.
9. Appellants additionally attach a copy of an electronic log (log) that states the "Return [was] transmitted and received successfully" for both their federal 2020 income tax return and their 2020 return. The last visible entry in the log states, "Retrieve Electronic Filing Status from the Intuit Host Server for," and the remaining log, if any, is omitted.

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.) Appellants do not dispute the computation or imposition of the penalty, but make reasonable cause arguments asserting that the penalty should be abated.

When respondent 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, the taxpayers must provide credible and competent evidence supporting a claim of reasonable cause; otherwise, the penalty cannot be abated. (*Ibid.*) To establish reasonable cause, the 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 tax return” (*Appeal of Fisher, supra*, citing *U.S. v. Boyle* (1985) 469 U.S. 241, 251-252 (*Boyle*).) “It requires no special training or effort to ascertain a deadline and make sure that it is met.” (*Boyle, supra*, 469 U.S. at p. 252.) “A facts and circumstances analysis is needed to properly determine whether a taxpayer who uses e-file technology can establish reasonable cause for filing its return late.” (*Appeal of Quality Tax & Financial Services, Inc.*, 2018-OTA-130P.)

Appellants attach a copy of an electronic log (log) that states the “Return [was] transmitted and received successfully” for both their federal 2020 income tax return and their 2020 return. The last visible entry in the log states “Retrieve Electronic Filing Status from the Intuit Host Server for,” but subsequent entries, if any, in that log have been redacted presumably by appellants. Appellants contend that appellant E. Macasaet interpreted this log entry as successful acceptance of the 2020 return by respondent.

The Office of Tax Appeals (OTA) has considered abatement of the late-filing penalty when the taxpayer erroneously interpreted transmission information from the e-file software provider. In *Appeal of Quality Tax & Financial Services, Inc., supra*, OTA noted that Intuit would have sent acknowledgements for “Return Transmitted,” “Return Received by Intuit,” and “Return Accepted.” As OTA explained, “an ordinarily intelligent and prudent businessperson would have viewed the E-File History and acknowledgment records to confirm whether the return had been timely transmitted, received by Intuit, and accepted. Moreover, an ordinarily intelligent and prudent businessperson, after viewing the E-File History and acknowledgment records, and noticing that the return had not been accepted, would have made other attempts to file prior to the end of the extension period.”¹ (*Appeal of Quality Tax & Financial Services, Inc., supra*.)

Appellants argue they believed the 2020 return was filed with and accepted by respondent. However, the log does not show the 2020 return was “accepted” by respondent; rather, it merely shows the 2020 return was transmitted to Intuit and received by Intuit. The log is silent as to the 2020 return’s e-file status with respondent. As OTA held in *Appeal of Quality Tax & Financial Services, Inc., supra*, an ordinarily intelligent and prudent businessperson would

¹ Notably, appellant E. Macasaet is a CPA and tax preparer with over 30 years of experience.

have made other attempts to file the return knowing that respondent had not accepted the return.

Appellants also argue that the death of appellant E. Macasaet's mother and brother should be considered with their reasonable cause argument. As a result of their deaths, appellant E. Macasaet suffered from insomnia and this affected his efforts to timely e-file the 2020 return. Appellants argue that the illness of a taxpayer's immediate family member may be reasonable cause for late filing. Additionally, appellants argue that appellant M. Rosales-Macasaet was also unable to timely file the 2020 return because she was occupied with caring for her husband, appellant E. Macasaet.

As support, appellants cite *Tabbi v. Commissioner*, T.C. Memo. 1995-463 (*Tabbi*), in which the federal tax court explained reasonable cause can apply due to the illness of a family member, "if the taxpayer shows that he or she cannot file a timely return because of such illness." In *Tabbi*, the tax court found the taxpayers were in the hospital continuously for four months after their child's heart surgery "around the time that their 1989 return was due to be filed." (*Tabbi, supra.*) Thus, the court found the taxpayers were unable to timely file their tax return because the illness of their son consumed their time.

OTA has also held that illness or other personal difficulties may be considered reasonable cause if the taxpayers present credible and competent proof that they were continuously prevented from filing a tax return. (*Appeal of Head and Feliciano*, 2020-OTA-127P.) The duration of the incapacity must approximate that of the tax obligation deadline. (*Ibid.*)

However, appellants were able to file the 2020 return, as evidenced by appellant E. Macasaet's efforts to file it before the extended due date. The illnesses and deaths of his mother and brother, although tragic, did not continuously prevent appellants from filing the 2020 return. Rather, unlike in *Tabbi*, appellants' filing was unsuccessful because appellants did not properly follow-up on the status of the attempted e-filing. The exercise of ordinary business care and prudence required appellants to do more than merely perform the tasks necessary to timely file their 2020 return; it also required appellants to verify that the 2020 return had been

timely transmitted, received, and accepted. (*Appeal of Fisher, supra*, citing *Appeal of Quality Tax and Financial Services, Inc., supra*.)

HOLDING

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

DISPOSITION

Respondent's action is sustained.

Signed by:

Veronica I. Long

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Veronica I. Long
Administrative Law Judge

We concur:

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Andrew Wong

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Andrew Wong
Administrative Law Judge

DocuSigned by:

Kenneth Gast

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Kenneth Gast
Administrative Law Judge

Date Issued: 12/13/2024