

2. On December 28, 2022, FTB issued a Notice of Tax Return Change – Revised Balance, stating that it could not verify the entire amount of withholding credits that appellants claimed on their return. FTB reduced appellants' withholding credits by \$20,961 from the reported amount of \$27,242 to the verified amount of \$6,281 (\$27,242 - \$20,961), which, after applying other payments, resulted in a tax balance due of \$16,601. FTB also imposed a late-filing penalty of \$13,437.50, and applicable interest.¹
3. During the period April 24, 2023, through October 27, 2023, FTB received the following payments: \$20,259 on April 24, 2023; a payment of \$13,823.45 on October 26, 2023; and a payment of \$13,851.93 on October 27, 2023, which FTB transferred from appellants' 2022 tax year. In total, FTB received payments of \$47,934.38, which represented an overpayment of \$13,887.14. FTB issued a refund of the overpayment on December 14, 2023.
4. On January 15, 2024, appellants filed a claim for refund requesting relief from the late-filing penalty based on reasonable cause, which FTB denied.
5. This timely appeal followed.

DISCUSSION

California imposes a penalty for 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 the penalty was imposed correctly. (*Appeal of Xie*, 2018-OTA-076P.) The burden of proof is on taxpayers to overcome the presumption by providing credible and competent evidence supporting a claim of reasonable cause. (*Ibid.*) Unsupported assertions are not sufficient to satisfy the taxpayers' burden of proof. (*Appeal of Mauritzson*, 2021-OTA-198P.)

To establish reasonable cause, taxpayers must show that the failure to timely file occurred despite the exercise of ordinary business care and prudence. (*Appeal of Jones*, 2021-OTA-144P.) In *U.S. v. Boyle* (1985) 469 U.S. 241, 252, the U.S. Supreme Court held that “[t]he failure to make a timely filing of a tax return is not excused by the [taxpayers’] reliance on an agent, and such reliance is not ‘reasonable cause’ for a late filing” The Court noted that one does not need to be a tax expert to know that tax returns have fixed filing dates and taxes

¹ FTB also increased the estimated tax penalty from the self-assessed amount of \$1,046 to \$1,490. On appeal, appellants make no specific arguments concerning the estimated tax penalty or applicable interest. Accordingly, OTA considers these items not in dispute and will not discuss them further.

must be paid when due. (*Id.* at p. 251.) California follows *Boyle* in that reliance on a tax adviser must involve reliance on substantive tax advice and not simple clerical duties. (*Appeal of Mauritzon*, 2021-OTA-198P.) Further, the exercise of ordinary business care and prudence requires that taxpayers do more than merely perform or delegate the tasks necessary to electronically file. (*Appeal of Fisher*, 2022-OTA-337P.) It also requires taxpayers to personally verify that the tax return was successfully transmitted, and, where it has not been, to take the appropriate corrective actions. (*Ibid.*)

Here, appellants filed their return on November 14, 2022, which is after the six-month extension due date of October 15, 2022. Thus, the late-filing penalty was properly imposed. However, appellants argue that there is reasonable cause for untimely filing their return. Specifically, appellants argue that their tax preparer submitted a timely return at 11:50 p.m. on October 17, 2022,² but the tax preparation software processed the return on October 18, 2022, making the return late. Appellants argue that they could not control the actual time of transmission which they assert “was likely completed mere minutes later.” In support of their contention, appellants provided a printout, which purports to show their California tax return filing. However, appellants’ printout does not show that a personal income tax return (i.e., CA Form 540) was ready to transmit at 11:50 p.m. on October 17, 2022, or that it was actually transmitted on October 18, 2022. Instead, the printout appears to show that a CA Form 568 (Limited Liability Company Return of Income) was filed at that time. As such, appellants have not provided credible and competent evidence showing that their tax preparer attempted to timely file a personal income tax return. Even if appellants did attempt to file a timely return, the exercise of ordinary business care and prudence requires appellants to do more than merely perform the tasks necessary to electronically file. (*Appeal of Fisher, supra.*) Appellants must also ensure that the return was actually filed on time.

In addition, appellants argue that their tax preparer’s employee fell ill due to COVID-19 and thus contributed to the last-minute submission.

The Supreme Court established the bright-line rule that a taxpayer’s reliance on an agent, such as an accountant, to file a return by the due date is not reasonable cause. (*U.S. v. Boyle, supra*, 469 U.S. at pp. 248-250.) Thus, even if appellants provided credible and competent evidence that showed the tax preparer’s employee fell ill due to COVID-19, appellants’ reliance on a tax preparer to file the return does not constitute reasonable cause.

² Because the extension due date of October 15, 2022, fell on a Saturday, returns filed on October 17, 2022, are considered timely.

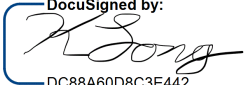
Finally, appellants assert that they filed a federal return and returns with other states at the same time, which were considered timely. However, whether other states accepted appellants' return as timely is not relevant to this matter. OTA is only concerned with whether appellants' California return was timely. As noted above, appellants have not shown that a personal income tax return was filed on or before the due date. Therefore, appellants have not established a legal basis to abate the late-filing penalty.

HOLDING

Appellants have not established reasonable cause to abate the late-filing penalty for the 2021 tax year.

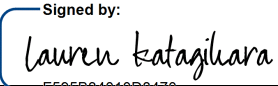
DISPOSITION

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

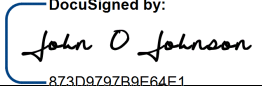
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Keith T. Long
Administrative Law Judge

We concur:

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Lauren Katagihara
Administrative Law Judge

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John O. Johnson
Administrative Law Judge

Date Issued: 1/29/2025