

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)	OTA Case No. 221111754
FRANKLIN J. DULIAN EXEMPTION TRUST)	
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)	

OPINION

Representing the Parties:

For Appellant:	Stephen R. McLeod, Trustee
For Respondent:	Arathi Ramalingam, Attorney Brad Coutinho, Attorney Supervisor

K. LONG: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Franklin J. Dulian Exemption Trust (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant's claim for refund of \$4,501 for the 2019 tax year.

Office of Tax Appeals (OTA) Panel Members Natasha Ralston, Asaf Kletter, and Keith T. Long held a virtual oral hearing for this matter on December 18, 2024. At the conclusion of the hearing, the record was closed and this matter was submitted for an opinion pursuant to California Code of Regulations, title 18, section 30209(b).

ISSUES

1. Whether appellant has established reasonable cause for the late filing of its return for the 2019 tax year.
2. Whether interest abatement is warranted.

FACTUAL FINDINGS

1. Appellant filed an untimely 2019 California Fiduciary Income Tax Return (Form 541) on June 28, 2021, reporting a tax liability of \$15,017. Appellant paid the liability on July 2, 2021.
2. On July 6, 2021, FTB issued to appellant a Notice of Tax Return Change – Revised Balance imposing a late filing penalty of \$3,754.25, plus applicable interest.
3. Appellant made a payment of \$4,501.10 on September 3, 2021, satisfying the liability.

4. On October 6, 2021, appellant filed a claim for refund of the late filing penalty and interest based on reasonable cause. FTB denied the claim for refund.
5. This timely appeal followed.

DISCUSSION

Issue 1: Whether appellant has established reasonable cause for the late filing of its return for the 2019 tax year.

FTB imposes a late filing penalty on a taxpayer who fails to file a return by either the due date or the extended due date, unless it is shown that the failure was due to reasonable cause and not 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 cause existed as would prompt an ordinary intelligent and prudent businessperson to have so acted under similar circumstances. (*Appeal of Head and Feliciano*, 2020-OTA-127P.)

On appeal, there is no dispute that appellant failed to file a return by the due date of July 15, 2020.¹ As such, FTB properly imposed the late filing penalty. However, appellant argues that there is reasonable cause for the late filing because it relied on a CPA to timely file its return. Appellant asserts that during the COVID-19 pandemic, its CPA became ill and was unable to file the return.

When FTB imposes a penalty, there is a rebuttable presumption that the penalty was properly imposed. (*Appeal of Xie*, 2018-OTA-076P.) The burden of proof is on the taxpayer to show that reasonable cause exists to support abatement of the late filing penalty. (*Ibid.*) To overcome the presumption of correctness that attaches to the penalty, a taxpayer must provide credible and competent evidence supporting a claim of reasonable cause, otherwise, the penalty cannot be abated. (*Ibid.*)

In *U.S. v. Boyle* (*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 must be paid when due. (*Id.* at p. 251.) The fact that a tax preparer was expected to attend to a

¹ In response to the Governor’s March 12, 2020 Executive Order declaring a state of emergency related to COVID-19, FTB postponed the filing deadline for 2019 returns. Although the emergency declaration was not lifted until February 2023, the deadline to file 2019 returns was not extended beyond 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>.)

matter does not relieve a taxpayer of the duty to comply with the statute, and an agent's failure to file a tax return cannot constitute reasonable cause for the taxpayer. (*Appeal of Fisher*, 2022-OTA-337P.) However, reasonable cause may be found when a taxpayer relies on substantive advice from an accountant or attorney on a matter of tax law, such as whether liability exists. (*Boyle, supra*, 469 U.S. at p. 251.) California follows *Boyle* in that a taxpayer's reliance on a tax adviser must involve reliance on substantive tax advice and not simple clerical duties. (*Appeal of Mauritzson*, 2021-OTA-198P.)

Illness or other personal difficulties may be considered reasonable cause if the taxpayer presents credible and competent proof that they were continuously prevented from filing a tax return. (*Appeal of Belcher*, 2021-OTA-284P.) When a taxpayer alleges reasonable cause based on an incapacity due to illness, the duration of the incapacity must approximate that of the tax obligation deadline. (*Ibid.*) However, if the difficulties simply caused the taxpayer to sacrifice the timeliness of one aspect of their affairs to pursue other aspects, the taxpayer must bear the consequences of that choice. (*Ibid.*)

Here, appellant has not provided evidence that illness continuously prevented its CPA from filing a return. For example, appellant has not provided any evidence of the timeframe, diagnoses, or extent of the illness.² OTA also notes that the contention that appellant's CPA was sick leading up to and including the July 15, 2020 due date or the automatic extension date of October 15, 2020, conflicts with information provided in appellant's claim for refund which states "[w]hen the extension of time to file had almost expired I again followed up with the preparer concerned we would not file on time. She then explained that she was having difficulties with some of the common stock sales calculations." Thus, it appears that appellant

² On appeal, appellant provided a declaration from its CPA in which the CPA declined to provide information regarding her illness.

was in communication with its CPA during the filing period, that the CPA was working, and that in spite of these circumstances, appellant failed to file a timely return.³

Nevertheless, appellant has a nondelegable duty to timely file its tax return. Thus, even if appellant provided credible and competent evidence that showed that its CPA fell ill due to COVID-19, appellant's reliance on a tax preparer to file its tax return does not constitute reasonable cause. (See *Appeal of Fisher, supra*; *Boyle, supra*, 469 U.S. at pp. 248-250.) As such, appellant has not established a legal basis to abate the late-filing penalty.

Issue 2: Whether interest abatement is warranted.

The imposition of interest is mandatory and cannot be waived based on reasonable cause. (R&TC, § 19101(a); *Appeal of Moy*, 2019-OTA-057P.) To obtain relief from interest, the taxpayer must qualify under the waiver provisions of R&TC section 19104 (pertaining to unreasonable error or delay by FTB in the performance of a ministerial or managerial act), R&TC section 19112 (pertaining to extreme financial hardship caused by significant disability or other catastrophic circumstance, or R&TC section 21012 (pertaining to reasonable reliance on the written advice of FTB).⁴ Appellant does not allege, and the record does not reflect, that any of the above waiver provisions are applicable here. Therefore, appellant has not established a basis to abate interest.

³ Indeed, the only evidence of the timeframe for the CPA's illness is in appellant's claim for refund. Specifically, appellant states:

She did not finish on time and I was informed again that there would be no taxes due as there would be no gains from any of the stock sales. One thing led to another and the holidays came and went. I was getting frantic and seriously considered replacing her but since she had been so diligent over the years, I gave her the benefit of the doubt and after all was told there were no income taxes due. Then she and several members of her family contracted [COVID-19] and was too ill to work for months. Upon her recovery in June of 2021 the returns were completed....

Based on this statement, it does not appear that appellant's CPA contracted COVID-19 or any other illness until after the filing deadline.

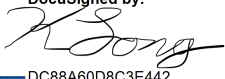
⁴ OTA does not have jurisdiction to review FTB's interest abatement determination under R&TC section 19112. (*Appeal of Moy, supra*.)

HOLDINGS


1. Appellant has not established reasonable cause for the late filing of its return for the 2019 tax year.
2. Interest abatement is not warranted.


DISPOSITION

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

DocuSigned by:

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Keith T. Long
Administrative Law Judge

We concur:

Signed by:

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Natasha Ralston
Administrative Law Judge

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Asaf Kletter
Administrative Law Judge

Date Issued: 2/11/2025