

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
M. RUSCITO AND) OTA Case No. 230513233
P. RUSCITO)
_____)

OPINION

Representing the Parties:

For Appellants: M. Ruscito
For Respondent: Noel Garcia-Rosenblum, Attorney
Brad Coutinho, Attorney Supervisor

K. WILSON, Hearing Officer: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. Ruscito and P. Ruscito (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$13,685.25 for the 2020 tax year.

Office of Tax Appeals (OTA) Panel Members Kim Wilson, Seth Elsom, and Huy “Mike” Le held an oral hearing for this matter in Sacramento, California on November 13, 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).

ISSUE

Whether appellants have shown reasonable cause to abate the late-filing penalty.

FACTUAL FINDINGS

1. On May 28, 2021, appellants made an extension payment of \$54,707 for their 2020 tax year.
2. On May 6, 2022, FTB received appellants’ untimely 2020 California Resident Income Tax Return reporting an estimated tax penalty of \$1,155 and total amount due of \$1,155.
3. FTB reviewed appellants’ return and, on July 27, 2022, issued a Notice of Tax Return Change – Revised Balance with a balance remaining of \$14,335.04, including applicable

interest. FTB increased appellants' taxable income by \$300 and tax by \$34, imposed a late-filing penalty of \$13,685.25,¹ reduced the estimated tax penalty from \$1,155 to \$64, plus applicable interest.

4. Appellants made two additional payments: (1) \$100 on August 11, 2022, and (2) \$14,292.59 on November 7, 2022.
5. On November 10, 2022, FTB received appellants' Reasonable Cause – Individual and Fiduciary Claim for Refund for the amount of \$14,292.59.²
6. On March 28, 2023, FTB denied appellants' claim for refund.
7. Appellants filed this appeal.

DISCUSSION

When FTB imposes a penalty, the law presumes that the penalty was imposed correctly. (*Appeal of Belcher*, 2021-OTA-284P.) A taxpayer has the burden of establishing reasonable cause. (*Ibid.*) To establish reasonable cause, a taxpayer 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. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.) 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 Belcher, supra.*)

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(a).) The penalty is 5 percent of the untimely paid tax per month or fraction thereof between the due date of the return and the date it is filed, up to 25 percent of that amount. (*Ibid.*) The filing and payment deadline for individual taxpayers for the 2020 tax year was extended from April 15, 2021, to May 17, 2021, due to COVID-19.³

¹ The penalty was calculated based on the untimely paid tax of \$54,741 at 25 percent, which equals a penalty of \$13,685.25.

² Appellants' claim for refund was comprised of the late-filing penalty of \$13,685.25, the estimated tax penalty of \$64, plus applicable interest.

³ See FTB, *State Tax Deadline for Individuals Postponed until May 17, 2021*, news release (March 19, 2021) <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2021-03-state-tax-deadline-for-individuals-postponed-until-may-17-2021.html>.

Appellants paid their taxes on May 28, 2021, but did not file their 2020 tax return until May 6, 2022, almost seven months after the extended due date of the return. As a result, FTB correctly calculated and imposed a late-filing penalty of \$13,685.25.

Appellants sent FTB a letter dated August 8, 2022, asking for leniency and a reprieve from paying the penalty based on reasonable cause. Appellants contend that FTB charged a 25 percent penalty for taxes that were one week late. FTB did not impose a penalty for the late payment but did impose the late-filing penalty since the return was filed seven months past the extended deadline for filing a return.

Appellants claimed that they were overwhelmed in 2021 with taking care of parents and two brothers who were hospitalized. During the hearing, appellants testified that they electronically sent in the funds to pay the taxes owed and forgot to mail in the tax paperwork. Appellants did provide credit card bills which show transactions in Florida. However, appellants have not provided information nor documentation which would establish that appellants were continuously prevented from filing their tax return through the extended due date of October 15, 2021. The documentation provided by appellants does not show that appellants were continuously in Florida. Furthermore, appellants were able to continue to take care of other financial obligations during the time they were in Florida caring for their parents. When taxpayers allege reasonable cause based on an incapacity due to illness, the duration of the incapacity must approximate that of the tax obligation deadline. (*Appeal of Head and Feliciano*, 2020-OTA-127P.) If the difficulties simply caused the taxpayers to sacrifice the timeliness of one aspect of their affairs to pursue other aspects, the taxpayers must bear the consequences of that choice. (*Ibid.*) While OTA is sympathetic to appellants' situation, the evidence does not support reasonable cause to abate the late-filing penalty.

Appellants also request a one-time forgiveness of the late-filing penalty. While the IRS does provide for a one-time penalty abatement, California did not have a similar provision until January 1, 2022. Specifically, R&TC section 19132.5 provides that for tax years beginning on or after January 1, 2022, a taxpayer may request a one-time abatement of a timeliness penalty imposed under Revenue and Taxation code section 19131. As the 2020 taxable year is at issue here, the provision is not applicable to the imposed late-filing penalty currently at issue for this appeal.

HOLDING

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

DISPOSITION

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

Signed by:
Kim Wilson
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Kim Wilson
Hearing Officer

We concur:

Signed by:
Seth Elsom
C640D432E3254FD...

Seth Elsom
Hearing Officer

DocuSigned by:
Huy "Mike" Le
A11783ADD49442B...

Huy "Mike" Le
Administrative Law Judge

Date Issued: 2/5/2025