

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of: )  
**J. WATKINS** ) OTA Case No. 240215370  
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**OPINION**

Representing the Parties:

For Appellant: Patrick J. Carlin Jr.

For Respondent: David C. Cortez, Associate Government  
Program Analyst

A. VASSIGH, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. Watkins (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$16,613.25 for the 2019 tax year.<sup>1</sup>

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).

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<sup>1</sup> Appellant was assessed a late filing penalty of \$16,613.25 and an underpayment of estimated tax penalty (estimated tax penalty) of \$2,225. On appeal before the Office of Tax Appeals (OTA), appellant requested an abatement of both the late filing penalty and estimated tax penalty. However, appellant only listed the amount of appeal as \$16,613.25. Therefore, the issue in this appeal is whether the late filing penalty of \$16,613.25 can be abated.

ISSUE<sup>2</sup>

Whether appellant has shown reasonable cause to abate the late filing penalty.

FACTUAL FINDINGS

1. Appellant untimely filed his 2019 tax return on June 18, 2021, reporting no amount due.
2. Appellant sent FTB a letter, which FTB characterizes as an “(informal) claim for refund,” in which appellant explains he was not able to timely file his 2019 tax return due to his tax preparer’s extended illness and subsequent death. The record does not indicate that FTB responded to appellant’s letter.
3. Subsequently, FTB sent appellant an Income Tax Due Notice and a collection notice for the balance owed on the 2019 tax year, after which the balance due was satisfied via payments and collection action.
4. Appellant then filed a claim for refund for the amount of the late filing penalty. FTB denied the claim for refund.
5. Appellant then filed this timely appeal.

DISCUSSION

R&TC section 19131 imposes a penalty for a taxpayer’s failure to file a return on or before the due date, unless it is shown that the late filing is due to reasonable cause and not willful neglect. (R&TC, § 19131(a).) Appellant’s 2019 California return had an original due date

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<sup>2</sup> Given that there is some ambiguity regarding appellant’s intention to appeal the estimated tax penalty, OTA addresses that penalty here. In this case, FTB revised appellant’s estimated tax payments based on FTB’s records. FTB then imposed an estimated tax penalty.

R&TC section 19136 incorporates by reference Internal Revenue Code (IRC) section 6654, which imposes an estimated tax penalty upon an individual for failing to timely make estimated income tax payments. The estimated tax penalty cannot be abated based solely on a finding of reasonable cause. (*Appeal of Johnson*, 2018-OTA-119P.) IRC section 6654(e)(3) provides limited exceptions to the imposition of the penalty if either of the following conditions are satisfied: (1) “by reason of casualty, disaster, or other unusual circumstances the imposition of [the penalty] would be against equity and good conscience”; or (2) the underpayment was due to reasonable cause and not willful neglect, and the taxpayer retired at the age of 62 or older in the tax year at issue or the prior year, or, alternatively, the taxpayer became disabled in the tax year for which the estimated tax payments were required to be made or in the preceding tax year.

In this appeal, appellant has not made any arguments or provided evidence indicating that the limited exceptions to the estimated tax penalty apply. Therefore, appellant has not established a basis upon which the estimated tax penalty may be abated.

of April 15, 2020, which was extended to July 15, 2020.<sup>3</sup> Appellant does not contend that the late filing penalty was improperly imposed or computed but contends that reasonable cause exists to abate the penalty.

When FTB imposes the late filing penalty, the law presumes that the penalty was imposed correctly. (*Appeal of Xie*, 2018-OTA-076P.) In the case where a taxpayer seeks to establish that a failure to act was due to reasonable cause, the taxpayer must show that the failure 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 Triple Crown Baseball, LLC*, 2019-OTA-025P.)

It is well established that each taxpayer has a personal, non-delegable obligation to ensure the timely filing of a tax return, and thus, reliance on an agent to perform this act does not constitute reasonable cause to abate a late filing penalty. (*U.S. v. Boyle* (1985) 469 U.S. 241, 251-252 (*Boyle*); *Appeal of Quality Tax & Financial Services, Inc.*, 2018-OTA-130P.) The law is clear: the fact that a tax preparer was expected to attend to a 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. (*Boyle, supra*, 469 U.S. at p. 252.)

Appellant asserts reasonable cause because his tax preparer's extended illness and subsequent death, which was not discovered for some time, prevented appellant from filing his return on time. Appellant's argument that he relied on his tax preparer to prepare the return does not relieve appellant of his non-delegable duty to timely file his return. (*Boyle, supra*, 469 U.S. at p. 247.) To establish reasonable cause, the taxpayer "must show that the failure to file timely returns occurred despite the exercise of ordinary business care and prudence, or that cause existed as would prompt an ordinary intelligent and prudent [businessperson] to have so acted under similar circumstances." (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.) In absence of such proof, OTA is without authority to abate the penalties at issue here.

Appellant has not provided information regarding when he realized his tax return was not being prepared, nor provided a timeline and explanation of why the return was filed nearly a year after the extended deadline. Appellant asserts that he contacted his tax preparer several times and was assured that the taxes would be completed timely. At some point,

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<sup>3</sup> In response to COVID-19, FTB postponed the due dates for returns, payments, and refund claims to 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>.

appellant must have become aware of his tax preparer’s inability to fulfill his duties. Additionally, appellant has not provided documents or other corroborating evidence supporting his statements. Unsupported assertions are not enough to satisfy appellant’s burden of proof. (*Appeal of Bannon*, 2023-OTA-096P.) Accordingly, appellant has failed to meet the burden of proof to show reasonable cause to abate the late filing penalty for the 2019 tax year.

HOLDING

Appellant has not shown reasonable cause to abate the late filing penalty.

DISPOSITION

FTB’s action is sustained.

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*Amanda Vassigh*  
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Amanda Vassigh  
Administrative Law Judge

We concur:

DocuSigned by:  
*Eddy Y. H. Lam*  
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Eddy Y.H. Lam  
Administrative Law Judge

Signed by:  
*Greg Turner*  
1B8E50433F1D4D5...  
Greg Turner  
Administrative Law Judge

Date Issued: 2/26/2025