

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
C. DAUGHERTY AND) OTA Case No. 240516190
A. DAUGHERTY)
_____)

OPINION

Representing the Parties:

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

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, C. Daugherty and A. Daugherty (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants' claim for refund of \$175,122.70¹ for the 2021 taxable year.

Appellants 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).

ISSUES

1. Have appellants established reasonable cause to abate the late-filing penalty?
2. Have appellants established a basis to abate the underpayment of estimated tax penalty (estimated tax penalty)?

FACTUAL FINDINGS

1. Appellants filed a California Nonresident or Part-Year Resident Income Tax Return late, on or about November 15, 2023. The return reported total tax of \$475,451, withholdings of \$7,197, tax due of \$468,254, penalties and interest of \$29,403, and an estimated tax

¹ This includes a late-filing penalty of \$117,498.75, an underpayment of estimated tax penalty of \$8,962, and applicable interest.

- penalty of \$8,925. Appellants paid \$506,582 (\$468,254 + \$29,403, + \$8,925) on November 27, 2023.
2. FTB issued a Notice of Tax Return Change – Revised Balance which imposed a late-filing penalty of \$117,498.75 and increased the estimated tax penalty reported on appellants’ tax return by \$37 to \$8,962.²
 3. Appellants paid the penalties plus applicable interest and requested a refund from FTB based on reasonable cause.
 4. FTB denied appellants’ claim for refund, and appellants filed this timely appeal.

DISCUSSION

Issue 1: Have appellants established reasonable cause to abate the late-filing penalty?

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.) When FTB imposes a penalty, the law presumes that the penalty was imposed correctly, and the burden of proof is on the taxpayer to establish otherwise. (*Appeal of Fisher*, 2022-OTA-337P.) To overcome the presumption of correctness attached to the penalty, taxpayers must provide credible and competent evidence supporting a claim of reasonable cause; otherwise, the penalty cannot be abated. (*Ibid.*) To establish reasonable cause, 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 ordinarily intelligent and prudent businesspersons to have so acted under similar circumstances. (*Ibid.*)

Appellants assert that during the COVID-19 pandemic, staffing challenges at their accounting and tax firm caused delays in their business accounting and tax filing. In their claim for refund filed with FTB, appellants add that they have gone to great lengths to ensure all delinquent federal and state returns were filed.

Neither of appellants’ contentions, i.e., staffing challenges at their accounting and tax firm and appellants’ going to great lengths to catch up with their tax filings, constitute reasonable cause for abatement of the late-filing penalty. Appellants fail to explain why, if the accounting and tax firm for their business had staffing issues that affected appellants’ ability to file on time, they did not seek another tax or accounting firm to ensure timely filed returns. It is well established that taxpayers have 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

² OTA’s record does not contain calculations submitted by either party; however, on appeal appellants do not dispute FTB’s calculation of the penalty.

cause to abate a late-filing penalty. (*U.S. v. Boyle* (1985) 469 U.S. 241, 251-252; *Appeal of Quality Tax & Financial Services, Inc.*, 2018-OTA-130P.) Appellants have therefore not established reasonable cause to abate the late-filing penalty.

Issue 2: Have appellants established a basis to abate the estimated tax penalty?

Internal Revenue Code (IRC) section 6654 imposes an addition to tax, which is treated and often referred to as a penalty, where an individual fails to timely pay estimated tax. R&TC section 19136 incorporates IRC section 6654 into California law subject to certain exceptions and modifications not relevant here. No provision in the IRC or R&TC allows the estimated tax penalty to be abated based solely on a finding of reasonable cause. As a result, there is no general reasonable cause exception to imposition of the estimated tax penalty. (*Appeal of Johnson*, 2018-OTA- 119P.) The estimated tax penalty is mandatory unless the taxpayer establishes that a statutory exception applies. (*Appeal of Saltzman*, 2019-OTA-070P.) The taxpayer bears the burden of proving that penalty abatement is warranted. (*Ibid.*)

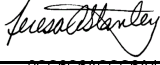
Appellants make no separate arguments with respect to abatement of the estimated tax penalty. OTA notes that appellants self-imposed an estimated tax penalty that was just \$37 less than that calculated by FTB. Appellants, therefore, clearly knew they had missed some estimated tax payments requiring imposition of the penalty at issue here. Moreover, the reasonable cause arguments asserted by appellants do not create a basis to abate a penalty where the law does not provide for reasonable cause abatement. (See *Appeal of Johnson, supra.*)

HOLDINGS

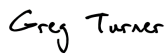
1. Appellants have not established reasonable cause to abate the late-filing penalty.
2. Appellants have not established a basis to waive the estimated tax penalty.


DISPOSITION

OTA sustains FTB's action denying appellants' claim for refund.

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 Teresa A. Stanley
 Administrative Law Judge

We concur:

Signed by:

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 Greg Turner
 Administrative Law Judge

Signed by:

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 Josh Lambert
 Administrative Law Judge

Date Issued: 3/28/2025