

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

In the Matter of the Appeal of: ) OTA Case No. 240415964  
**TRUST B OF THE RESPICIO FAMILY** )  
**REVOCABLE TRUST** )  
\_\_\_\_\_ )

**OPINION**

Representing the Parties:

For Appellant: Arleen Ruiz, Trustee

For Respondent: Noel Garcia-Rosenblum, Attorney

M. GEARY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Trust B of the Respicio Family Revocable Trust (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$14,100.75 for the 2021 tax year.

Appellant waived its right to an oral hearing and submitted the matter to the Office of Tax Appeals (OTA) on the written record pursuant to California Code of Regulations, title 18, section 30209(a).

**ISSUE**

Is appellant entitled to abatement of the late-filing penalty?

**FACTUAL FINDINGS**

1. At all times relevant to this appeal, Arleen Ruiz (trustee B) was both a beneficiary and the trustee of appellant.
2. On April 7, 2022, trustee B retained the services of a law firm to provide legal services in connection with the administration of appellant.
3. On April 13, 2022, trustee B paid a tax professional for work done in connection with appellant’s 2021 federal return.
4. Respondent received appellant’s 2021 California Fiduciary Income Tax Return (the return) on November 9, 2023.

5. The return reported \$56,403 total tax and tax due, but no payment was made prior to or with the return.
6. Respondent sent a November 20, 2023 Notice of Tax Return Change – Revised Balance to inform appellant that, in addition to the reported tax due, respondent imposed a late-filing penalty of \$14,100.75 and interest and fees totaling \$5,383.57.
7. Appellant made payments on November 15, 2023, and January 10, 2024, paying the balance due.
8. Appellant filed the claim for refund dated January 17, 2024.
9. By letter dated March 12, 2024, respondent denied the claim.
10. This timely appeal followed.

### DISCUSSION

Appellant was required to file its return and pay the taxes due on or before April 15, 2022. (R&TC, § 18566.) Appellant filed its return over 18 months late.<sup>1</sup> R&TC section 19131 requires respondent to impose a late-filing penalty when a taxpayer does not file its return on or before its due date, unless the taxpayer shows that the late filing was due to reasonable cause and not due to willful neglect. 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 such cause existed as would prompt an ordinarily intelligent and prudent businessperson to have so acted under similar circumstances. (*Appeal of Head and Feliciano*, 2020-OTA-127P.)

The late-filing penalty is five percent of the tax due for each month (or fraction of a month) after the due date that the tax return is not filed, not to exceed 25 percent of the tax. (R&TC, § 19131(a).) Thus, if a taxpayer does not file a tax return within five months of the due date, the maximum penalty amount of 25 percent of the tax will apply. The law presumes that respondent correctly imposed the penalty, and the taxpayer has the burden of proving otherwise. (*Appeal of Xie*, 2018-OTA-076P.)

Here, appellant does not dispute that the return was late or the amount of the late-filing penalty. Appellant's sole argument is that the late filing was due to reasonable cause, and not due to willful neglect, and that the penalty should therefore be abated. In support of the claim,

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<sup>1</sup> Although R&TC section 18567 authorizes respondent to grant a taxpayer up to six more months to file a tax return, and the corresponding regulation provides for an automatic six-month extension without a written request (Cal. Code Regs., tit. 18, § 18567), if the taxpayer does not file the return by the extended due date, no valid extension exists, and the late-filing penalty amount is computed by reference to the original due date of the return. (*Ibid.*)

appellant asserts that trustee B was unaware that she had been appointed as trustee of appellant until April 6, 2022, when an enrolled agent who was also the trustee of a related trust (Trust A), so informed her. Appellant contends that this other trustee (trustee A) undertook to file the required income tax returns on behalf of appellant and Trust A. In support of this contention appellant's trustee provides copies of an April 13, 2022 invoice submitted to appellant by trustee A for federal income tax preparation services, a grant deed executed on December 2, 2021, by trustee A on behalf of both trusts, the April 7, 2022 employment agreement between trustee B and the law firm, and other documents that indicate trustee A refunded fees paid to him for the preparation of appellant's 2021 federal return. In essence, appellant argues that the evidence shows that its trustee, trustee B, hired a tax professional, trustee A, to timely file its return, that the failure to timely file the return was the fault of trustee A only, and that an ordinarily intelligent and prudent businessperson in appellant's position would have acted similarly under the circumstances.


The evidence is not sufficient to overcome the presumption that respondent correctly imposed the penalty. There is insufficient evidence to show that appellant took reasonable steps to ensure that its return was filed by the due date. Trustee B's April 7, 2022 employment agreement with the law firm indicates trustee B's knowledge of her role as trustee, eight days before the return due date (without extension). Trustee B appears to fault trustee A for failure to file appellant's California return, but the April 13, 2022 invoice from trustee A refers to services rendered in connection with the sale of trust assets and the filing of appellant's *federal* return, not the return at issue here. Regardless of which trustee or tax professional may have some responsibility for the late filing, the indisputable fact is that appellant had a nondelegable obligation to file the return by the due date, and reliance on others to fulfill that obligation is not reasonable cause. (*United States v. Boyle* (1985) 469 U.S. 241, 247-252.) Therefore, OTA finds that appellant has not shown that its failure to timely file its 2021 tax return was due to reasonable cause and not due to willful neglect.

HOLDING


Appellant is not entitled to abatement of the late-filing penalty.


DISPOSITION

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

DocuSigned by:  
  
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Michael F. Geary  
Administrative Law Judge

We concur:

DocuSigned by:  
  
\_\_\_\_\_  
Erica Parker  
Hearing Officer

DocuSigned by:  
  
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Keith T. Long  
Administrative Law Judge

Date Issued: 4/1/2025