

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
J. DOMINGO) OTA Case No. 231214907
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OPINION

Representing the Parties:

For Appellant: Jenny Vu, Tax Appeals Assistance Program (TAAP)¹

For Respondent: Ariana Macedo, Graduate Student Assistant

S. ELSOM, Hearing Officer: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. Domingo (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$3,260.25, plus applicable interest, for the 2020 tax year.

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).

ISSUE

Whether appellant has established reasonable cause for the abatement of the late filing penalty.

¹ Jenny Vu is the current TAAP representative for appellant at the time this Opinion was issued. Appellant filed his own opening brief and Charles Kaupke of TAAP filed appellant’s reply brief.

FACTUAL FINDINGS

1. Appellant did not timely file a 2020 California income tax return.
2. On May 18, 2021, respondent received a payment of \$13,041 towards appellant's 2020 tax year tax liability.
3. On June 6, 2023, respondent sent appellant a Request for Tax Return (Request), stating that respondent's information indicated appellant had received income in the 2020 tax year and may have a California filing requirement, but had not filed a tax return.
4. In response to the Request, appellant untimely filed a 2020 California income tax return on June 9, 2023, reporting total tax of \$49,516, income tax withheld of \$36,475, and tax due of \$13,041.²
5. On June 15, 2023, respondent sent appellant a Notice of Tax Return Change – Revised Balance (Notice), imposing a late filing penalty of \$3,260.25, plus applicable interest. Appellant did not respond, and respondent subsequently sent appellant an Income Tax Due Notice.
6. Appellant subsequently made a payment satisfying the balance due for the 2020 tax year.
7. On August 7, 2023, appellant submitted Form 2917 Reasonable Cause – Individual and Fiduciary Claim for Refund to respondent. Appellant included with the refund claim a payment invoice from Baywide Tax & Accounting Services (Baywide) dated May 17, 2021; a copy of appellant's 2020 California income tax return electronically signed by Baywide and dated May 16, 2021; California and federal 2020 Form 8879 e-file authorization forms; a WebPay confirmation statement issued by respondent for appellant's payment of \$13,041 on May 18, 2023; and email communications between appellant and Baywide.
8. Appellant on Form 2917 stated, "While I never received an official confirmation of e-file (a copy of the document), I have documents supporting my actions to approve and authorize [Baywide] to submit my 2020 taxes on my behalf."
9. On August 9, 2023, appellant submitted a second Form 2917 to respondent, and included a document titled "Acknowledgement and General Information for Taxpayers Who File Returns Electronically" (Acknowledgement Form) for the 2020 tax year. The

² As noted above, appellant made a payment of \$13,041 on May 18, 2021, which respondent credited to appellant's 2020 tax year account. Thus, appellant's reporting of tax due of \$13,041, without also claiming the previous payment in the same amount as credit, appears to be an error. However, this item is not material to the issue under appeal and OTA does not further address it.

Acknowledgement Form thanked appellant “for participating in IRS e-file,” and notified appellant that his 2020 California tax return, which was electronically filed by Baywide and assigned a submission ID, was accepted on May 17, 2021.

10. On September 13, 2023, respondent sent appellant a letter denying appellant’s claim for refund.
11. This timely appeal followed.

DISCUSSION

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 respondent 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 Xie*, 2018-OTA-076P.) To overcome the presumption of correctness attached to the penalty, a taxpayer must provide credible and competent evidence supporting a claim of reasonable cause; otherwise, the penalty cannot be abated. (*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.) 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. (*Appeal of Fisher*, 2022-OTA-337P.)

Appellant first argues that he timely filed his 2020 California income tax return, and thus, appears to assert that the late filing penalty was improperly imposed. In support of this argument, appellant provided a copy of a 2020 California income tax return dated May 16, 2021, and the Acknowledgement Form, which he asserts proves that respondent timely received the return. Appellant further asserts that respondent’s acceptance of appellant’s 2020 tax payment led him to believe that respondent accepted the return as timely filed.

Additionally, appellant makes a number of reasonable cause type arguments for the abatement of the late filing penalty. Appellant asserts that his California Form 8879 e-file authorization of Baywide to file his 2020 return, payment to Baywide, respondent’s acceptance of his 2020 tax payment, and the Acknowledgement Form provided by Baywide, collectively

establish reasonable cause.³ Appellant also cites the *Appeal of Xie, supra*, and *Appeal of Moren*, 2019-OTA-176P, to assert that his history of timely filing returns supports his intent to timely file the 2020 return, which presumably, further supports his reasonable cause argument.

Appellant's first argument, that he timely filed his 2020 return, is not supported by the record in this appeal. The Acknowledgement Form provided by appellant to prove the timely filing of the California 2020 return thanks appellant "for participating in IRS e-file" and thus does not appear to be issued by respondent. Further, the Acknowledgement Form states a submission ID that corresponds to the submission ID listed on respondent's internal database which reports the electronic transmission of appellant's 2020 California return on June 9, 2023. This information establishes that Baywide filed appellant's California return on June 9, 2023, and respondent received the return on that date. However, the record in this appeal does not include any information that establishes Baywide had previously filed a 2020 return by the May 17, 2021 deadline.⁴

With respect to appellant's reasonable cause type arguments that he relied on Baywide to file the return, it is well established that each taxpayer has a personal, non-delegable obligation to ensure the timely filing of a tax return, and reliance on an agent to perform this act does not constitute reasonable cause to abate a late filing penalty. (*Appeal of Fisher, supra*.) In the absence of an acknowledgement from respondent that it received a return, an ordinarily prudent person would have its e-filing history and acknowledgment records for the return to confirm whether it had been transmitted, received, and accepted. (*Appeal of Auburn Old Town Gallery, LLC*, 2019-OTA-319P.) Here, appellant asserts that he contracted with Baywide to file the return, but "never" received confirmation that the return had been filed. Instead, appellant provides only the Acknowledgement Form that he requested from Baywide around August 9, 2023, which as stated above, is not credible evidence to support respondent's timely receipt of the return on or before May 17, 2021. Appellant does not explain any other steps he took to ensure that respondent received the return, and as a result, has not established reasonable cause.

³ During this appeal, appellant cites R&TC section 19132, which imposes a late payment penalty to the amount of untimely paid tax; however, at issue in this appeal is the late filing penalty imposed under R&TC section 19131. Since both sections apply the same reasonable cause standard to determine abatement of the respective penalties, appellant's citation error has no effect on the determination here.

⁴ For the 2020 tax year, respondent postponed the filing and payment due date to May 17, 2021. See: <http://www.ftb.ca.gov/about-ftb/newsroom/2020-tax-year-extension-to-file-and-pay-individual.html>.

Further, appellant's assertion that respondent's acceptance of his tax payment led him to believe the return was timely filed, is not relevant to the determination of reasonable cause for the abatement of the late filing penalty. The due date for personal income taxpayers who file on a calendar year basis is April 15 of the following year, with an automatic extension of six months provided if the return is filed within six months of the original due date. (R&TC, §§ 18566, 18567; Cal. Code Regs., tit. 18, § 18567(a).) The filing due date is separate from the due date for the payment of tax, which in general is the due date of the return *without* regard to any extension of time for filing the return. (R&TC, § 19001.) Therefore, a taxpayer's timely payment of tax is not a factor that is considered in the determination of whether the taxpayer has established reasonable cause to abate the late filing penalty.

Finally, appellant's reference to *Appeal of Xie, supra*, and *Appeal of Moren, supra*, are distinguishable from the facts of this appeal. In both cases, OTA held that while a good filing history lends credibility to the taxpayer's intent, it does not establish intent in and of itself. In *Appeal of Xie, supra*, OTA held that the taxpayer's filing history was not relevant because the taxpayer made no attempt to timely file for the tax year at issue. In *Appeal of Moren, supra*, OTA held that a taxpayer's history of timely filing and payment compliance may be considered as *supporting* evidence of the credibility and intent of the taxpayer. However, in *Appeal of Moren, supra*, OTA foremost found that the taxpayer substantiated that necessary information was unavailable, that he made prudent efforts to acquire that information, and that the delayed response (or lack thereof) by the third party led to the late payment of tax. Here, as stated above, OTA finds that appellant has not substantiated any attempts he made to verify the timely filing of his return. Thus, appellant's filing history is insufficient to establish reasonable cause for the late filing of appellant's 2020 return.⁵

⁵ R&TC section 19132.5 authorizes first time abatement of certain California income tax timeliness penalties, such as the late filing penalty, for qualified individual filers effective for tax years beginning on or after January 1, 2022, which is after the tax year at issue.

HOLDING

Appellant has not established reasonable cause for the abatement of the late filing penalty.

DISPOSITION

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

Signed by:

Seth Elsom

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Seth Elsom
Hearing Officer

We concur:

Signed by:

Josh Lambert

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Josh Lambert
Administrative Law Judge

DocuSigned by:

Sheriene Anne Ridenour

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Sheriene Anne Ridenour
Administrative Law Judge

Date Issued: 5/7/2025