

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
L. OLVERA) OTA Case No. 230814005
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OPINION

Representing the Parties:

For Appellant: L. Olvera

For Respondent: Eric R. Brown, Attorney

For Office of Tax Appeals: Linda Frenklak, Attorney

V. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, L. Olvera (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$14,103 for the 2020 tax year.

Office of Tax Appeals (OTA) Panel Members Veronica I. Long, Greg Turner, and Teresa A. Stanley held an oral hearing for this matter in Sacramento, California, on April 17, 2025. 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 appellant has established that the late filing penalty should be abated.

FACTUAL FINDINGS

1. FTB’s records reflect that appellant filed a California Resident Income Tax Return (return) for tax year 2020 on November 18, 2021.
2. FTB issued appellant a State Income Tax Balance Due Notice imposing a late filing penalty of \$14,103. Appellant failed to pay the balance due, and FTB issued appellant an Income Tax Due Notice, a Final Notice Before Levy and Lien, an Earnings Withholding Order for Taxes, and a Notice of Intent to Offset Federal Payments. FTB imposed a collection cost fee of \$316 and interest of \$1,213.77.

3. Appellant remitted the balance due of \$9,301.77 and requested a refund for the amount of the penalty imposed.¹
4. FTB denied appellant's claim for refund. This timely appeal followed.
5. On appeal, FTB submits a copy of appellant's 2020 federal Individual Master File (IMF).

DISCUSSION

R&TC section 19131 imposes a late filing penalty when a taxpayer fails to file a return on or before the filing due date, unless the late filing is due to reasonable cause and not due to willful neglect. The penalty is calculated at five percent of the tax liability for each month or fraction thereof the return is past due, up to a maximum of 25 percent. (R&TC, § 19131.) When FTB imposes a penalty, there is a rebuttable presumption that the penalty was properly imposed. (*Appeal of Xie*, 2018-OTA- 076P.)

Appellant contends that her return was timely filed by her return preparer, but in the event that the return is found to be untimely, she requests the late filing penalty be abated on the basis of her good filing history and reasonable cause. Specifically, appellant contends that she is a senior who relied on her return preparer to timely file her return, that she encountered difficulties filing due to the COVID-19 pandemic, and that denial of her claim would result in financial hardship. Appellant also states that the IRS abated her penalties for the 2020 tax year.

Return Filing Date

Appellant contends that her return was filed in October 2021. If appellant had filed her return by this date, it would be within the automatic extension of six months provided by regulation, which sets an extended due date of October 15, 2021, for 2020 tax returns. (R&TC, § 18567; Cal. Code Regs., tit. 18, § 18567.) However, if appellant's return was not filed by October 15, 2021, then the six-month extension would not apply, and appellant's 2020 tax return would have the original due date of May 17, 2021.² (R&TC, § 18566.)

A taxpayer must provide credible and competent evidence supporting a claim of reasonable cause to overcome the presumption of correctness. (*Appeal of Xie, supra.*) Here, appellant has not provided evidence to substantiate that her return was filed by October 15, 2021. In contrast, FTB produced a copy of appellant's 2020 return with a filing date

¹ Although appellant's claim for refund states the amount of the penalty to be \$9,310.64, FTB computed the total amount of the penalty to be \$14,103.

² Due to the COVID-19 pandemic, FTB postponed the original filing due date for 2020 tax returns from April 15, 2021, to May 17, 2021. (*Appeal of Bannon*, 2023-OTA-096P.)

stamp of November 18, 2021.³ In its reply brief, FTB requested that appellant provide evidence indicating that she filed her 2020 return on or before the automatic extended deadline of October 15, 2021. Appellant did not provide additional evidence in support of her position. Accordingly, appellant has not met her burden of proof in establishing that her return was filed by October 15, 2021, and therefore, the late filing penalty was properly imposed.

Reasonable Cause and Reliance on Return Preparer

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 Auburn Old Town Gallery, LLC*, 2019-OTA-319P.) Difficulty obtaining information does not constitute reasonable cause for the late filing of a return. (*Appeal of Xie, supra.*) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.)

Reasonable cause is established when a taxpayer shows reasonable reliance on the advice of an accountant or attorney that it was unnecessary to file a return, even when such advice turned out to have been mistaken. (*U.S. v. Boyle* (1985) 469 U.S. 241, 250 (*Boyle*); *Appeal of Mauritzson*, 2021-OTA-198P.) When an accountant or attorney advises a taxpayer on a substantive matter of tax law, such as whether a liability exists, it is reasonable for the taxpayer to rely on that advice. (*Boyle, supra*, 469 U.S. at p. 251.) However, assuming a professional will comply with the unambiguous statutory filing requirements does not constitute grounds for relief due to reasonable cause. (*Ibid.*) Accordingly, appellant's reliance on her return preparer does not establish a basis to abate the late filing penalty.

Appellant also contends that the late filing penalty should be abated based on reasonable cause. She asserts that in 2021, when she should have filed her 2020 return, she experienced stress and confusion due to the COVID-19 pandemic. Appellant also asserts that she needed to meet in person with her tax preparer to discuss the sale of her residence, and the tax preparer failed to inform her that she was required to pay estimated taxes when the tax preparer filed her request for an extension for her 2020 taxes in 2021. Appellant further asserts that she has always timely met her tax obligations and her "late payment" for tax year 2020 was an isolated, unintentional infraction. Lastly, appellant contends that her payment of the late filing penalty has caused her financial hardship.

³ Appellant's 2020 IMF shows that the IRS also received appellant's 2020 federal return on November 18, 2021.

Appellant has not provided any contemporaneous evidence showing reliance on the advice of a professional or other grounds to establish reasonable cause for her failure to file her 2020 return prior to October 15, 2021. To the extent that appellant had difficulty obtaining information concerning the sale of her residence, this does not constitute reasonable cause for the late filing of her 2020 return. (*Appeal of Xie, supra.*) While OTA is sympathetic to the stress and confusion caused by the COVID-19 pandemic and the financial hardship caused by appellant's payment of this penalty, appellant has not established that her failure to timely file her 2020 return occurred despite the exercise of ordinary business care and prudence. Appellant has not demonstrated reasonable cause for the late filing of her 2020 return.

Lastly, appellant apparently argues that the late filing penalty should be abated because the IRS abated her federal late filing penalty. Appellant does not produce any evidence, such as a letter from the IRS, indicating the reason for the abatement of any federal penalties. Appellant does not specifically contend that the IRS abated the 2020 federal late filing penalty based on a showing of reasonable cause.

In response, FTB asserts that it may abate a late filing penalty if a taxpayer provides IRS documentation clearly stating that the IRS abated the federal late filing penalty based on a showing of reasonable cause. FTB contends that appellant's 2020 IMF indicates that the IRS abated appellant's federal late filing penalty and federal late payment penalty without listing the penalty reason code for either penalty. Citing Internal Revenue Manual section 20.1.1.3.6.1, FTB also contends that the IRS abated appellant's two 2020 federal penalties based on its first-time abatement program.⁴

There is no dispute that the IRS abated the 2020 federal late filing penalty, but appellant does not state or establish that the IRS abated this penalty based on a showing of reasonable cause. With respect to first-time abatement, R&TC section 19132.5 authorizes the first-time abatement of certain penalties for certain filers for tax years beginning on or after January 1, 2022. Accordingly, there is no legal basis for OTA to abate appellant's late filing penalty for tax year 2020.

⁴ FTB states that the TC 290 immediately after TC 166 and TC 271 "indicates first time abatement of an unpaid penalty as the Action Reason Code (ARC) [sic] is -065 followed by -020." OTA notes that the IMF lists TC 161, rather than TC 166, as well as TC 271, immediately before TC 290. As stated in IRS Notice 2022-36, the IRS did not impose a late filing penalty if the taxpayer filed a 2019 or 2020 federal return on or before September 30, 2022, due to the COVID-19 pandemic.

HOLDING

Appellant has not established that the late filing penalty should be abated.

DISPOSITION

FTB's denial of appellant's claim for refund is sustained.

Signed by:

Veronica I. Long

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Veronica I. Long
Administrative Law Judge

We concur:

Signed by:

Greg Turner

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Greg Turner
Administrative Law Judge

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Teresa A. Stanley

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Teresa A. Stanley
Administrative Law Judge

Date Issued: 6/4/2025