

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
M. BRADSHAW) OTA Case No. 240516301
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OPINION

Representing the Parties:

For Appellant: John Petzinger, Representative

For Respondent: Paige Chang, Attorney

S. ELSOM, Hearing Officer: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. Bradshaw (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$88,693.25¹ for the 2021 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 Appellant’s request for appeal lists the amount at issue as \$65,735.75, which is the balance due for the 2021 tax year as stated on respondent’s December 28, 2023 Final Notice of Levy and Lien, which is calculated as follows: tax of \$356,328, plus the late filing penalty of \$88,693.25, plus interest of \$9,951.50, minus payments of \$389,182, minus withholdings of \$55, which equals \$65,735.75. Appellant provides reasonable cause arguments for the abatement of the late filing penalty but does not contest the amount of tax assessed or interest imposed. Therefore, the correct amount at issue in this appeal is the late filing penalty of \$88,639.25 in its entirety.

FACTUAL FINDINGS

1. Appellant did not timely file a 2021 California income tax return.
2. On January 15, 2022, and September 15, 2022, appellant made payments of \$1,500 and \$387,679, respectively, for the amount of tax, penalties, and interest appellant calculated as due in September 2022, for the 2021 tax year. Additionally, appellant had tax withholdings of \$55 during the 2021 tax year.
3. On August 30, 2023, respondent sent appellant a Payment Received – No Return on File letter (No Return Letter) stating that respondent had not received appellant's 2021 return. The No Return Letter requested that appellant mail copies of the return's cover sheet, the return, and all wage statements if the return had already been filed or file a return if it had not been filed.
4. On September 15, 2023, in response to the No Return Letter, appellant filed a 2021 Form 540 return, reporting total tax of \$356,328, payments of \$1,555 (estimated payments of \$1,500 plus withholdings of \$55), tax due of \$354,773, interest and penalties totaling \$36,095, and a total amount due of \$390,868.²
5. On October 10, 2023, respondent sent appellant a Notice of Tax Return Change - Revised Balance letter, which accepted the amount of income and tax reported on appellant's 2021 return, increased payments by \$387,679, and imposed a late filing penalty of \$88,693.25, plus applicable interest, for a total balance due of \$64,750.40.³
6. On November 3, 2023, appellant sent a letter to respondent to request a waiver of the late filing penalty. Respondent denied appellant's request.⁴
7. On November 21, 2023, respondent sent an Income Tax Due Notice to appellant, followed by a Final Notice Before Levy and Lien requesting appellant pay a balance due of \$65,735.25 for the 2021 tax year. Appellant subsequently paid the balance due.

² Appellant's return was signed by appellant on September 14, 2022, and did not report appellant's September 15, 2022, payment of \$387,679. Respondent properly credited appellant's payment of \$387,679 to appellant's 2021 tax year account effective September 15, 2022, and notified appellant of this in its October 10, 2023 Notice of Tax Return Change – Revised Balance letter.

³ Appellant's return reflected a self-assessed late *payment* penalty of \$26,608. The Notice of Tax Return Change – Revised Balance imposed a late *filing* penalty of \$88,693.25, in place of the self-assessed late *payment* penalty of \$26,608. (See R&TC, § 19132(b) [providing that the late payment shall not be assessed if, for the same tax year, the late filing penalty imposed under R&TC section 19131 is equal to or greater than the late payment penalty imposed under R&TC section 19132].)

⁴ Respondent sent appellant a Penalty Waiver Denial letter on November 22, 2023.

8. On January 15, 2024, appellant filed Form 2917 Reasonable Cause – Claim For Refund to request abatement of the late filing penalty.
9. Respondent subsequently denied appellant’s claim for refund.
10. 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(a).) 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 presents three reasonable cause arguments to abate the late filing penalty: (1) appellant asserts that she signed Form 8879 “California e-file Authorization for Individuals” on September 13, 2022, authorizing her preparer to file the return and made full payment of the tax liability at that time; (2) the IRS determined that her father established reasonable cause to abate a late filing penalty in a fact pattern similar to appellant’s; and (3) the COVID-19 pandemic and a family member’s health problems contributed to appellant’s difficulty in meeting financial obligations. Additionally, appellant asserts that her filing and payment history satisfy the criteria for one time abatement under R&TC section 19132.5, and although California has not adopted these provisions for the year at issue, the legislative intent of this section should be considered in determining whether the late filing penalty may be abated.

Regarding appellant’s first argument, the exercise of ordinary business care and prudence requires appellant to do more than merely perform or delegate the tasks necessary to timely file the return. It also required appellant to personally verify that the return had been successfully transmitted, and when it had not been, to take appropriate corrective action.

(*Appeal of Fisher, supra.*) Though appellant argues that she acted as an ordinarily intelligent and prudent businessperson by signing Form 8879 to authorize her preparer to file the 2021 return, appellant does not explain any steps that she subsequently took to verify that the preparer had transmitted the return and respondent had received it. Instead, appellant asserts that the preparer failed to inform her that he had not filed the return, and she became aware that the return had not been filed upon receiving respondent's No Return Letter.

Further, appellant's assertion that respondent's acceptance of her tax payment led her 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 filing of a return and the payment of the tax due are two separate and independent obligations with separate penalties imposed for failure to timely complete each. (See R&TC, §§ 19031 [imposing a late filing penalty] versus 19132 [imposing a late payment penalty].) Respondent's acceptance of appellant's tax payment on September 15, 2022, was not an indication that respondent had a tax return on file for appellant for that tax year. Appellant also appears to take issue with respondent's failure to notify appellant that it did not have a 2021 tax return on file until August 30, 2023. However, there is no provision in the R&TC which requires respondent to notify a taxpayer that it has payments but no return on file for a particular tax year. Instead, this notice was sent by respondent as a courtesy only.

Regarding appellant's second argument, although respondent may abate a penalty if a taxpayer can provide IRS documentation clearly stating that the IRS abated the same penalty for reasonable cause (*Appeal of Belcher, 2021-OTA-284P*), the IRS did not abate appellant's late filing penalty here. Appellant agrees that the IRS's determination for her father's reasonable cause argument is not controlling, but instead asserts that because federal and state law apply the same reasonable cause standard and the facts of her father's reasonable cause argument are similar to her own, respondent should similarly determine that appellant has established reasonable cause to abate the late filing penalty. However, the facts of the father's reasonable cause argument are distinguishable from appellant's. Appellant's father argued that he timely filed a federal return but had relied upon the *advice* of a preparer who stated that the return's signatures were "sufficient," and based upon the signatures, the IRS treated the return as invalid. Here, appellant does not dispute that the return was untimely filed but instead argues that she authorized her preparer to file the return, and he failed to do so in a timely manner. Further, the legal basis for the IRS's determination to abate appellant's father's timeliness penalties is not clear from the information provided by appellant, and thus the

underlying logic applied by the IRS in reaching its determination cannot be applied to appellant here.⁵

Regarding appellant's third argument, though OTA acknowledges the challenges caused by the COVID-19 pandemic and sympathizes with the difficulties appellant describes, appellant bears the burden to prove that the difficulties she described continuously prevented her from filing the 2021 return. (See *Appeal of Belcher, supra.*) Appellant does not provide any explanation or evidence to prove how the COVID-19 pandemic continuously prevented her from ensuring the timely filing of her 2021 return, and thus, has not satisfied her burden of proof.

To address appellant's last argument, appellant acknowledges that R&TC section 19132.5 provides a one-time abatement of timeliness penalties for tax years beginning on or after January 1, 2022, and is otherwise not applicable to the late filing penalty imposed under R&TC section 19131 for the 2021 tax year here. However, appellant appears to assert that the California Legislature intended to apply the one-time abatement provisions for tax years as early as 2021. Appellant specifically states, "the enactment of [R&TC § 19132.5] shows that the California [L]egislature disagrees with the imposition of [the late filing] penalty in situations like [appellant's]." While a review of legislative intent may be necessary where the language of the statute supports multiple readings, if the text is unambiguous and provides a clear answer, OTA need go no further. (*Microsoft Corp. v. Franchise Tax Bd.* (2006) 39 Cal.4th 750, 758.) Here, the language of R&TC sections 19131 and 19132.5 is unambiguous, so further analysis of the California Legislature's intent is not necessary.

⁵ For the 2021 tax year, the IRS provided relief for first-time abatement of penalties. Here, it is not clear whether the IRS abated appellant's father's federal penalties due to reasonable cause or based on the federal first-time abatement program.

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:

DocuSigned by:

Amanda Vassigh

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Amanda Vassigh
Administrative Law Judge

DocuSigned by:

Phyllis Mallard

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For

Andrew Wong
Administrative Law Judge

Date Issued: 6/19/2025