

In the Matter of the Appeal of:) OTA Case No. 240917414
R. CULLUMBER AND)
J. CULLUMBER)
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1. On November 23, 2022, FTB received appellants' 2021 California income tax return reporting a total tax liability of \$82,094, withholding payments of \$15,306, and tax due of \$66,788.
2. On December 14, 2022, FTB issued a State Income Tax Balance Due Notice imposing a late-filing penalty of \$16,697, and applicable interest.
3. On February 23, 2023, FTB issued an Income Tax Due Notice for the late-filing penalty plus accrued interest. FTB then sent appellants a Final Notice Before Levy and Lien as

- a final demand for payment of the late-filing penalty of \$16,697 plus accrued interest on April 4, 2023.
4. On April 8, 2023, FTB received appellants' Reasonable Cause – Individual and Fiduciary Claim for Refund (Claim for Refund) requesting a refund of the late-filing penalty for the 2021 tax year.¹
 5. On June 14, 2024, FTB issued a letter denying appellants' claim for refund.
 6. This timely appeal followed.

DISCUSSION

California imposes a penalty for 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 FTB imposes a penalty, the law presumes that the penalty was imposed correctly, and the burden of proof is on taxpayers 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 timely file 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. (*Ibid.*)

The United States Supreme Court established the bright-line rule that a taxpayer's reliance on an agent, such as an accountant, to file a return by the due date is not reasonable cause. (*U.S. v. Boyle* (1985) 469 U.S. 241, 252.) The exercise of ordinary business care and prudence requires that taxpayers do more than merely perform or delegate the tasks necessary to electronically file. (*Appeal of Fisher, supra.*) It also requires taxpayers to personally verify that the tax return was successfully transmitted, and, where it had not been, to take the appropriate corrective actions. (*Ibid.*)

Here, appellants' 2021 tax return had an original due date of April 15, 2022. (R&TC, § 18566.) An automatic extension of six months is provided by regulation, dependent on the return being filed during that extension, which sets an extended due date of October 15, 2022, for 2021 individual tax returns. (R&TC, § 18567; Cal. Code Regs., tit. 18, § 18567(a).) FTB

¹ There is no evidence in the record establishing that appellants paid the penalty and interest due as reflected in the Final Notice Before Levy and Lien. However, FTB issued a claim denial letter in response to appellant's Claim for Refund and does not assert on appeal that the penalty and interest were not paid. Thus, OTA assumes appellants paid the penalty and interest.

received appellants' 2021 tax return November 23, 2022, after the six-month extension, and thus, FTB properly imposed the late-filing penalty.

On appeal, appellants contend that the 2021 tax return was filed timely on June 11, 2022, and the late-filing penalty should be abated. Appellants provide a copy of a tax software program 2021 Activity Report that states "CA – ACCEPTED 6/11 (Current Status)", with a submission ID number, as proof that they timely filed their 2021 tax return. However, FTB maintains there is no record of an attempt to file prior to November 23, 2022. Additionally, FTB provides a declaration signed under the penalty of perjury stating that FTB contacted Lacerte, the tax software company used by appellants' tax preparer, and confirmed that Lacerte only has record of receiving appellants' 2021 return that was filed on November 23, 2022. Appellants provide no other evidence in support of their position.

Here, appellants' only evidence in support of their assertion that they timely filed their 2021 return on June 11, 2022, is a Lacerte 2021 Activity Report. However, appellants' report seemingly conflicts with information contained in Lacerte's and FTB's records.² Additionally, appellants provide no explanation as to why they submitted a return on November 23, 2022, as confirmed by FTB and Lacerte, if they had already filed in June. Based on the information provided, FTB's records present the more trustworthy evidence and establish the 2021 return was filed on November 23, 2022. Appellants provide no other evidence that they acted with ordinary business care and prudence and took any additional steps to ensure or verify that their return was timely filed.

Appellants have not shown that they acted as an ordinarily intelligent and prudent businessperson would have acted under similar circumstances. Therefore, appellants have not established reasonable cause to abate the late-filing penalty.

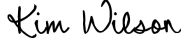
² OTA also notes that the submission ID number on appellants' activity report contains a unique sequence of numbers and confirms that the submission ID number was generated on November 23, 2022.

HOLDING

Appellants have not established reasonable cause to abate the late-filing penalty for the 2021 tax year.

DISPOSITION

FTB's action denying appellants' claim for refund is sustained.

Signed by:

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Kim Wilson
Hearing Officer

We concur:

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Erica Parker
Hearing Officer

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Teresa A. Stanley
Administrative Law Judge

Date Issued: 7/9/2025