

In the Matter of the Appeal of:) OTA Case No. 230513302
H. MEKHTARIAN AND)
N. MEKHTARIAN)
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¹ As discussed below, FTB issued claim for refund denials on February 15, 2023. Thereafter, on April 25, 2023, FTB issued a Notice of Tax Return Change and a partial refund of \$4,132.88.

FACTUAL FINDINGS

1. On July 1, 2022, appellants filed an untimely California Income Tax Return for the 2020 tax year. After applying withholding credits of \$333, appellants reported a tax due of \$178,837. FTB processed the return as filed and applied a previously received payment of \$178,837 to appellants' account, which satisfied the liability.
2. Thereafter, FTB issued a Notice of Tax Return Change-Revised Balance imposing a late filing penalty of \$44,709.25, an estimated tax penalty of \$3,930, and applicable interest.
3. On July 20, 2022, appellants made a payment of the balance due. Appellants also filed a claim for refund requesting penalty relief based on reasonable cause, which FTB denied.
4. This appeal followed.
5. During this appeal, appellants filed an amended return, which reduced their tax due by \$3,113 from \$178,837 to \$175,724. FTB accepted appellants' amended return, reduced the late filing penalty, recalculated interest, and issued a refund of \$4,132.88.
6. During the oral hearing, appellants testified to the following:
 - a. Appellant N. Mekhtarian's mother and grandmother became ill at approximately the same time during September and October of 2021. Both family members required at-home care due to a lack of hospital space and passed away during January and February 2022.
 - b. Appellants' CPA was hospitalized in March 2021 and passed away in May 2021. Another accountant informed appellants of the CPA's death and delinquent return in November 2021, after the extended due date for filing a return.

DISCUSSION

Issue 1: Whether appellants have established reasonable cause for the late filing of their California income tax return for the 2020 tax year.

FTB imposes a late filing penalty when a taxpayer fails to file a return by either the due date or the extended due date, unless it is shown that the failure was due to reasonable cause and not willful neglect. (R&TC, § 19131.) The due date for appellants' 2020 tax year was May 17, 2021.² The extended due date for filing a return was October 15, 2021, and is only

² Generally, an individual taxpayer who files on a calendar year basis must file a tax return by April 15th following the close of the calendar year. (R&TC, § 18566.) However, 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.)

applicable if a return is filed during that extension period. (R&TC, § 18567; Cal. Code Regs. § 18567.)³ The late filing penalty is calculated at five percent of the tax, for each month or fraction thereof, that the return is late, with a maximum penalty of 25 percent of the tax. (R&TC, § 19131(a).)

When FTB imposes a penalty, there is a rebuttable presumption that the penalty was properly imposed. (*Appeal of Xie*, 2018-OTA-076P.) The burden of proof is on the taxpayer to show that reasonable cause exists to support abatement of the late filing penalty. (*Ibid.*) To establish reasonable cause, the taxpayer must show that the failure to file a timely return occurred despite the exercise of ordinary business care and prudence, or that such cause existed as would prompt an ordinary intelligent and prudent businessperson to have so acted under similar circumstances. (*Appeal of Head and Feliciano*, 2020-OTA-127P.) To overcome the presumption of correctness that attaches to the penalty, a taxpayer must provide credible and competent evidence supporting a claim of reasonable cause, otherwise, the penalty, cannot be abated. There is no partial waiver of the penalty; “it is fully enforceable against the taxpayer unless the taxpayer had reasonable cause not to comply with the [statute’s] requirements that year.” (*In re Sanford* (11th Cir. 1992) 979 F.2d 1511, 1513.)

On appeal, there is no dispute that appellants failed to file a timely return on or before the May 17, 2021 due date.⁴ As such, FTB properly imposed the late filing penalty. However, appellants assert that there is reasonable cause for the late filing based on several circumstances. First, appellants assert that during the month of March 2021, their accountant was hospitalized and then passed away before filing appellants’ return. At the oral hearing, appellant H. Mekhtarian testified that he was informed of the CPA’s passing, and the delinquent return, by a different accountant after the due date for filing a timely return. As corroboration, appellants provided a death certificate indicating that as of May 23, 2021, appellants’ accountant was deceased.

Next, appellants contend that they were prevented from filing a timely return due to a series of family illnesses. At the oral hearing, appellants provided credible testimony that appellant N. Mekhtarian’s mother became ill during September 2021 and ultimately required constant care. Appellants also testified that appellant N. Mekhtarian’s grandmother became ill

³ The extended due date is set as an automatic six-month extension from the original due date and is calculated without regard to any postponement of the original due date. (*Appeal of Nguyen*, 2025-OTA-333P.)

⁴ Appellants also failed to file a return within the extended due date, expiring on October 15, 2021. Accordingly, the extension period is not applicable here and the late filing penalty is properly calculated based on the original due date of the return. (Cal. Code Regs., tit. 18, § 18567(b).)

the following month and required continuous care. In support of these contentions, appellants provided hospital records showing the admission of appellant N. Mekhtarian's mother on January 15, 2022, and a death certificate indicating that as of January 30, 2022, appellant N. Mekhtarian's mother was deceased.

OTA addresses each contention below.

Appellants' Reliance on a CPA

In *U.S. v. Boyle* (1985) 469 U.S. 241, 252 (*Boyle*), the U.S. Supreme Court held that "the failure to make a timely filing of a tax return is not excused by the [taxpayers'] reliance on an agent, and such reliance is not 'reasonable cause' for a late filing" The Court noted that one does not need to be a tax expert to know that tax returns have fixed filing dates and taxes must be paid when due. (*Id.* at p. 251.) The fact that a tax preparer was expected to attend to a matter does not relieve a taxpayer of the duty to comply with the statute. (*Appeal of Fisher*, 2022-OTA-337P.) However, reasonable cause may be found when a taxpayer relies on substantive advice from an accountant or attorney on a matter of tax law, such as whether a liability exists. (*Boyle, supra*, 469 U.S. at p. 251). California follows *Boyle* in that a taxpayer's reliance on a tax advisor must involve reliance on substantive tax advice and not simple clerical duties. (*Appeal of Mauritzon*, 2021-OTA-198P.)

Here, there is no argument or evidence that appellants' failure to timely file a return was the result of reliance on substantive advice from their CPA. Instead, appellants assert that they relied on an accountant merely to prepare and file the return. However, appellants' reliance on their accountant does not establish reasonable cause for their failure to file a timely return. (*Appeal of Fisher, supra.*) Indeed, the exercise of ordinary business care and prudence required appellants to do more than merely delegate the task necessary to timely file the return. (*Ibid.*) An ordinarily intelligent and prudent businessperson would have taken steps, prior to the due date, to confirm whether the return had been transmitted, received, and accepted. (*Quality Tax & Financial Services, Inc.*, 2018-OTA-130P.)

Appellants have not provided any argument or evidence that they took steps to ensure that the CPA timely filed their return. For example, there is no evidence in the record that appellants even inquired about the status of their return. Instead, appellant H. Mekhtarian testified that he was only informed of the CPA's passing, and the delinquent return, upon notification by a different accountant after the due date for timely filing. Accordingly, appellants have not met their burden of showing reasonable cause based on this contention.

Appellants' Family Members' Illness.

The death or serious illness of a taxpayer or a member of a taxpayer's immediate family may be considered reasonable cause. (*Boyle, supra*, 469 U.S. 241, 243, fn.1). When a taxpayer alleges reasonable cause based on an incapacity due to illness, the duration of the incapacity must approximate that of the tax obligation deadline. (*Ibid.*) Here, OTA is primarily concerned with the period from May 17, 2021 through October 15, 2021. In the case of a family member, the death or illness must involve a combination of severity and timing that would have made it "virtually impossible" to comply and prevented the taxpayer's compliance with the filing requirement. (See *Estate of Stuller v. United States* (7th Cir. 2016) 811 F.3d 890 (*Stuller*) [holding that a taxpayer who had suffered through many tragic events in the 15 months before her return was due had not established reasonable cause because the events were not sufficiently severe and continuous to make it "virtually impossible" to comply with the filing requirements].)

Here, appellants provided testimony that family members were ill and required care during the months of September and October of 2021. Appellants' testimony and evidence show that their family situation worsened in late 2021 and into 2022. However, an illness that does not arise until September or October of 2021 cannot be considered reasonable cause for missing the filing due date in May of that year.⁵ Furthermore, the evidence does not indicate that appellants were preoccupied by the family members' illnesses to the extent that it was virtually impossible to file a return during these months. (See *Stuller, supra.*) However, the question for purposes of seeking abatement of the late filing penalty is whether appellants had reasonable cause for missing the filing due date for the return. That date here was May 17, 2021. Thus, any reasonable cause analysis for periods after that date, and certainly in October 2021 or beyond, is moot.⁶

Appellants have not shown that they were continuously prevented from filing a return during the period May 17, 2021, through October 2021. Considering the foregoing, OTA finds

⁵ While the onset of the illnesses were within the potential extended due date for filing a return, there is no indication that appellants were in the process or had made any efforts to file by the extended due date of October 15, 2021. For example, appellants provided testimony at the hearing indicating that they did not become aware of their CPA's death "until past the October deadline . . . , somewhere around November 2021."

⁶ Additionally, as appellants' return was due on May 17, 2021, the late filing penalty had already reached its maximum amount of 25 percent five months later, during October 2021, per R&TC section 19131(a).

that appellants have not met their burden of showing reasonable cause exists for the filing of a late return for the 2020 tax year.⁷

Issue 2: Whether appellants have established a basis for abatement of the estimated tax penalty.

California generally conforms to Internal Revenue Code (IRC) section 6654, which imposes an addition to tax, which is treated as a penalty, where an individual fails to timely pay estimated tax. (R&TC, § 19136(a).) The estimated tax penalty is like an interest charge in that it is calculated by applying the interest rate from the due date of the estimated tax payment until the earlier of the date it is paid or the 15th day of the 4th month following the close of the taxable year. (See IRC, § 6654(a) & (b); R&TC, § 19136(b); *Appeal of Johnson*, 2018-OTA-119P.) Under R&TC section 19136 taxpayers who receive income not subject to withholding are required to make payments of the estimated amount of their tax.⁸

The estimated tax penalty is mandatory unless the taxpayer establishes that an exception applies. (*Appeal of Saltzman*, 2019-OTA-070P; *Appeal of Johnson, supra*.) FTB may waive the estimated tax penalty in two instances: (1) it determines that by reason of casualty, disaster, or other unusual circumstances the imposition of the estimated tax penalty would be against equity and good conscience; or (2) it determines that the taxpayer's failure to timely pay the estimated tax was due to reasonable cause, and the taxpayer either retired after reaching age 62, or became disabled, in the taxable year for which the estimated payments were required to be made or in the previous year. (IRC, § 6654(e)(3).) The phrase "casualty, disaster, or other unusual circumstances" generally refers to unexpected events that cause hardship or loss such that it would be inequitable to impose the estimated tax penalty. (*Appeal of Johnson, supra*.)

⁷ With their appeal brief, appellants also requested one-time penalty abatement and argued that they have a good history of filing timely returns. California law provides for a one-time abatement of a timeliness penalty for individual taxpayers who are subject to the personal income tax. (R&TC, § 19132.5(a).) However, the statute only applies to requests for abatement made for taxable years beginning on or after January 1, 2022. (See R&TC, § 19132.5(f).) The penalty in this case applies to the 2020 tax year and is therefore not eligible for one-time abatement.

⁸ Generally, the required annual payment is the lesser of 90 percent of the tax shown on the current year or 100 percent of the tax shown on the prior year's return. (IRC, § 6654(d)(1)(B).) However, if the adjusted gross income shown on the return for the preceding taxable year in any calendar year exceeds \$150,000, then the required payment is the lesser of 90 percent of the tax shown on the return for the taxable year or 110 percent of the tax shown on the return of the individual for the preceding year. (IRC, § 6654(d)(1)(C)(i).)


On appeal, appellants have not asserted that either of the two exceptions to the estimated tax penalty apply. Further, OTA does not find any evidence that a casualty, disaster, or unusual circumstance contributed to appellants' underpayment or that appellants retired or became disable during the relevant tax period.⁹ Thus, OTA finds no basis to relieve the estimated tax penalty.

HOLDINGS

1. Appellants have not established reasonable cause for the late filing of their California income tax return for the 2020 tax year.
2. Appellants have not established a basis for abatement of the estimated tax penalty.

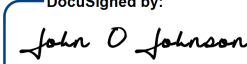
DISPOSITION

FTB's action is sustained.

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Keith T. Long
Administrative Law Judge

We concur:

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John O. Johnson
Administrative Law Judge

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Seth Elsom
Administrative Law Judge

Date Issued: 10/2/2025

⁹ Under R&TC section 6654 the estimated tax penalty accrues through the original due date of the return. As such, the relevant period for any casualty, disaster, or other unusual circumstance is the time leading up to the original due date of the return. Any hardship occurring after that date has no effect on the estimated tax penalty.