

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
M. SWANSON AND) OTA Case No. 230813992
B. SWANSON)
_____)

OPINION

Representing the Parties:

For Appellants: M. Swanson
For Respondent: Ariana Macedo, Graduate Legal Assistant
Brad Coutinho, Assistant Chief Counsel

K. WILSON, Hearing Officer: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. Swanson and B. Swanson (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants' claim for refund of \$6,345.25 for the 2021 tax year.

Office of Tax Appeals (OTA) Panel Members Kim Wilson, Veronica I. Long, and Natasha Ralston held an oral hearing for this matter in Sacramento, California on August 19, 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).

ISSUES

1. Whether appellants have shown reasonable cause to abate the late-filing penalty.
2. Whether appellants have shown a legal basis to abate interest.

FACTUAL FINDINGS

1. Appellants met with their CPA, Ms. Higby, on April 11, 2022, to receive their completed 2021 tax returns. Appellants in prior years had mailed in their tax returns, but Ms. Higby stated that the 2021 returns would be electronically filed. Appellants signed the authorization form to allow the taxes to be paid on April 18, 2022, via direct debit.

2. Appellants went to speak to Ms. Higby on May 5, 2022, since the funds had not cleared their bank account. Ms. Higby reassured them that the returns were filed timely, and the taxes were paid timely.
3. Appellant's payment of \$25,381 to FTB cleared their bank on July 1, 2022. Appellants anticipated that their payment to FTB would clear their bank in April 2022 and, when they learned that their payment did not clear their bank until July 1, 2022, they attempted to contact Ms. Higby to learn why. Appellants called Ms. Higby on October 14th, 21st and 24th of 2022, and received the message that her voicemail was full. Appellants called Ms. Higby again on November 7, 2022, and received the same message.
4. On November 23, 2022, appellants contacted and met with an IRS agent, who told them that the funds were received but the IRS had not received a return for tax year 2021.
5. Following their IRS appointment, appellants began trying to contact FTB starting on November 28, 2022, and made an in-person appointment for December 9, 2022.
6. Appellants filed their return at FTB's Sacramento office on December 9, 2022. Appellants made a payment of \$685.84 when they filed their return.
7. On January 10, 2023, FTB issued appellants a State Income Tax Balance Due Notice informing them that they owed an additional \$6,345.25 for a late-filing penalty, plus applicable interest.
8. On January 15, 2023, appellants submitted a Reasonable Cause – Individual and Fiduciary Claim for Refund (Claim for Refund) and a Request for Abatement of Interest for the period of April 15, 2022, through December 31, 2022. Appellants remitted payments of \$5,971.05 and \$683.93 to FTB.
9. On February 6, 2023, FTB refunded \$683.93 to appellants.
10. On June 29, 2023, FTB issued a Claim for Refund Denied letter, which denied appellants' claim for refund of the late-filing penalty and interest.
11. This timely appeal follows.

DISCUSSION

Issue 1: Whether appellants have shown reasonable cause to abate the late-filing penalty.

California imposes a penalty for the failure to file a return on or before the due date, unless it is shown that the failure to timely file was due to reasonable cause and not due to willful neglect. (R&TC, § 19131; *Appeal of Fisher*, 2022-OTA-337P (*Fisher*)). When FTB imposes a penalty, the law presumes that the penalty was imposed correctly. (*Appeal of Belcher*, 2021-OTA-284.) A taxpayer has the burden of establishing reasonable cause. (*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. (*Fisher, supra* citing *U.S. v Boyle*, (1985) 469 U.S. 241, 252.) The law is clear: 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, and an agent's failure to file a tax return cannot constitute reasonable cause for the taxpayer. (*Fisher, supra.*)

Appellants argue that the late-filing penalty should be abated because they exercised the requisite level of care in ensuring the timely filing of the return. Appellant-husband testified that they timely self-filed their tax returns in prior years. However, due to the complexity of their 2021 return, they sought the assistance from a CPA, Ms. Higby. Appellants met with Ms. Higby on April 11, 2022, to receive their completed tax returns. Appellants wanted to mail their tax returns in, but Ms. Higby stated that the returns would be electronically filed. Appellants signed the authorization form to allow the taxes to be paid via direct debit on April 18, 2022. Appellants went to speak to Ms. Higby on May 5, 2022, since the funds had not cleared their bank account. Ms. Higby reassured them that the returns were filed, and the taxes were paid timely. However, when appellants learned that the funds did not clear their bank until July 1, 2022, appellants tried several times to contact Ms. Higby via telephone but only received a message that the voice mailbox was full.¹ On November 23, 2022, appellants contacted and met with an IRS agent, who told them that the funds were received but the IRS had not received a return for tax year 2021. Appellants supplied a copy of their tax return, provided to them by Ms. Higby, to the IRS during their visit. Appellants again tried to contact Ms. Higby but were not able to reach her. Following their IRS appointment, appellants began trying to contact FTB starting on November 28, 2022, and made an appointment for December 9, 2022. During the December 9, 2022 appointment, appellants were informed that the funds were received on

¹ Appellants testified and provided evidence of a calendar that they contacted Ms. Higby on the following dates: October 14, 2022, October 21, 2022, October 24, 2022, and November 7, 2022.

July 1, 2022, but the return was not. Appellants provided FTB with a copy of the return that was supposed to be filed by Ms. Higby by the April 18, 2022 filing deadline.²

In *Fisher*, OTA declined to abate the late-filing penalty and held that appellants had not exercised ordinary business care and prudence. In that appeal, the appellants took steps including hiring a tax return preparer, reviewing the return, and receiving confirmation from the preparer's firm that their return had been filed. OTA reasoned that the exercise of ordinary business care and prudence required more from appellants than delegating the filing of the return to their tax preparer; it required appellants to verify that the return was successfully transmitted, and when it had not been, to take corrective action.

In contrast with *Fisher*, in this case the record shows that appellants did more than delegate the filing of their return to a return preparer. Appellants took corrective action when they learned that their tax return had not been filed or taxes paid. Appellants repeatedly attempted to contact their return preparer, Ms. Higby, when they learned their taxes had not been paid when expected. They proactively contacted and made an appointment with the IRS when they were unable to reach Ms. Higby. Within days of learning that their federal return had not been received, appellants proactively contacted FTB, made an appointment, and filed their tax return. Accordingly, OTA finds that appellants exercised ordinary business care and prudence and have shown reasonable cause to abate the late-filing penalty.

Issue 2: Whether appellants have shown a legal basis to abate interest.

If any amount of tax is not paid by the due date, interest is required to be imposed from the due date until the date the taxes are paid. (R&TC, § 19101(a).) Interest is not a penalty but is compensation for the taxpayer's use of money which should have been paid to the state. (*Appeal of Leebow*, 2025-OTA-426P.) Imposition of interest is mandatory, and it can only be abated in certain limited situations when authorized by law. (R&TC, § 19101(a); *Appeal of Leebow*, *supra*.) There is no reasonable cause exception to the imposition of interest. (*Appeal of Leebow*, *supra*.) To obtain relief from interest, appellants must qualify under R&TC section 19104, 19112, or 21012. Based on the evidence and appellants' arguments, none of these statutory provisions apply. Thus, appellants have not established a legal basis to abate interest.

² Tax returns filed by Monday, April 18, 2022, were treated as timely since Friday, April 15, 2022, was a legal holiday, Emancipation Day, in the District of Columbia. (Cal. Code Regs., tit. 18, § 18566.)

HOLDINGS

1. Appellants have shown reasonable cause to abate the late-filing penalty.
2. Appellants have not shown a legal basis to abate interest.

DISPOSITION

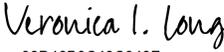
FTB's action denying appellants' claim for refund is reversed for the late-filing penalty and sustained for denial of interest abatement.

Signed by:

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 Kim Wilson
 Hearing Officer

We concur:

Signed by:

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 Veronica I. Long
 Administrative Law Judge

Signed by:

 25F8FE08FF56478...

 Natasha Ralston
 Administrative Law Judge

Date Issued: 11/14/2025