

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 241117931
P. MATHESON AND)
R. MATHESON)
_____)

OPINION

Representing the Parties:

For Appellants: P. Matheson and R. Matheson

For Respondent: David Cortez, Associate Government
Program Analyst

Office of Tax Appeals: Namrita Randhawa, Program Specialist

H. FAMULARO, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, P. Matheson and R. Matheson (appellants) appeal an action by the Franchise Tax Board (respondent) denying appellants' claim for refund of \$8,093.75 for the 2021 tax year.

Appellants 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 appellants have established reasonable cause to abate the late-filing penalty.

FACTUAL FINDINGS

1. On August 30, 2023, respondent sent appellants a notice titled, Payment Received – No Return on File, which advised appellants respondent had received appellants' estimated tax payment of \$4,740 for the 2021 tax year, but respondent had no record of receiving appellants' 2021 California income tax return.
2. On October 15, 2023, appellants untimely filed their 2021 tax return that reported total tax of \$38,797, California tax withholding of \$5,000, estimated tax payments of \$34,366, an estimated tax penalty of \$52, and an overpayment of \$517.

3. On November 21, 2023, respondent sent appellants a Notice of Tax Return Change - Revised Balance, which provided that appellants had a revised balance due of \$7,307.89 based on a reduction of appellants' estimated tax and extension payments reported on their tax return, and the imposition of a late-filing penalty of \$8,093.75, estimated tax penalty of \$137, and applicable interest and fees for the 2021 tax year.
4. On December 4, 2023, appellants paid their 2021 income tax liability.
5. Appellants subsequently filed a claim for refund for abatement of the late-filing penalty on the following grounds: (1) they have reasonable cause because they relied on their return preparer to timely file their 2021 return; or (2) they are entitled to one-time penalty abatement. In support of appellants' position that they attempted to timely file their 2021 tax return, they attached records including an invoice from their return preparer to prepare appellants' 2021 tax return dated October 27, 2022, their credit card statement reflecting a payment to their return preparer on October 31, 2022, a signed 2021 California e-file Return Authorization for Individuals dated October 31, 2022, a screenshot of an email appellants sent their return preparer on June 27, 2023, a copy of a complaint about their return preparer to the California Tax Education Council dated December 6, 2023, a response from the State of California Department of Justice dated January 23, 2024, and a copy of appellants' Plaintiff's Claim and Order to Go to Small Claims Court against their return preparer signed on April 1, 2024.
6. Respondent denied appellants' claim for refund.
7. This timely appeal followed.

DISCUSSION

R&TC section 19131(a) imposes a late-filing penalty where a taxpayer fails to file a return when due, unless the failure is due to reasonable cause and not 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(a).) The standard of reasonable cause requires the taxpayer to establish that the failure to timely file occurred despite the exercise of ordinary business care and prudence. (*Appeal of Jones*, 2021-OTA-144P.) 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.)

Appellants contend they are entitled to abatement of the late-filing penalty based on reasonable cause because they reasonably relied on their return preparer to timely file their 2021 return, or, alternatively, they are entitled to one-time penalty abatement. Appellants contend that they “processed all [documents and their return] on time . . . [but their return preparer] did not.” Appellants state they were not aware that their return preparer had not timely filed their 2021 tax return until they received the August 30, 2023 notice from respondent that their 2021 tax return had not been filed. Appellants also state they believed their 2021 return was timely filed because respondent accepted their 2021 estimated tax payment of \$4,740.

Appellants’ reliance on their return preparer to file their 2021 tax return does not relieve them of their responsibility to ensure that it was timely filed. (See *Appeal of Fisher, supra.*) The exercise of ordinary business care and prudence required appellants to do more than merely perform and delegate the tasks necessary to timely file the return. It also required appellants to personally verify the return had been successfully transmitted, and when it had not been, to take appropriate corrective action. (*Ibid.*) The record does not show appellants took such action, but they instead chose to rely solely upon their return preparer and assumed that their 2021 tax return was filed because respondent had accepted their 2021 estimated tax payment.

Furthermore, appellants’ argument that they reasonably relied on their return preparer to timely file their tax return is contradicted by their own records. Appellants’ 2021 tax return was due on April 15, 2022.¹ Appellants’ return preparer’s invoice to prepare their 2021 tax return is dated October 27, 2022, appellants’ credit card statement reflects a payment to their return preparer on October 31, 2022, and appellants’ 2021 California e-file Return Authorization for Individuals is signed and dated October 31, 2022. Based on these records, appellants took no action to file their 2021 tax return for more than five months after the 2021 tax return original due date. Accordingly, OTA finds that appellants have not met their burden to establish reasonable cause to abate the late-filing penalty for the 2021 tax year.

Lastly, R&TC section 19132.5 provides for a one-time abatement of certain timeliness penalties but only for individual taxpayers with good tax compliance history for tax years beginning on or after January 1, 2022. Further, while the IRS has an administrative program called “First Time Abate,” under which it will abate timeliness penalties if a taxpayer has timely filed returns and paid tax for certain past years, neither the California Legislature nor respondent

¹ Appellants’ 2021 tax return was originally due on April 15, 2022, or on October 15, 2022, if filed within the six-month automatic extension. (R&TC, §§ 18566, 18567; Cal. Code Regs., tit. 18, § 18567.)

has adopted a comparable penalty abatement program outside of R&TC section 19132.5. (See *Appeal of Auburn Old Town Gallery, LLC*, 2019-OTA-319P.)

HOLDING

Appellants have not established reasonable cause to abate the late-filing penalty.

DISPOSITION

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

Signed by:

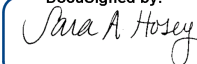
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Hans Famularo
Administrative Law Judge

We concur:
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Veronica I. Long
Administrative Law Judge

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Sara A. Hosey
Administrative Law Judge

Date Issued: 12/10/2025