OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **J. LUDLOW AND** **A. HENNESSEY**	OTA Case No. 250218770

OPINION

Representing the Parties:

For Appellants: J. Ludlow and A. Hennessey

For Respondent: Paige Chang, Attorney

K. WILSON, Hearing Officer: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. Ludlow and A. Hennessey (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants' claim for refund of $35,415.75 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).

ISSUES

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

FACTUAL FINDINGS

1. On December 27, 2022, appellants made a payment of $165,000 for the 2021 tax year.
2. On January 3, 2023, appellants untimely filed a joint 2021 California Nonresident or Part-Year Resident Income Tax Return (return), reporting total tax of $141,663, total payments of $165,000, overpaid tax of $23,337, a self-assessed underpayment of estimated tax penalty of $2,727, and requesting a refund of $20,610.

3. FTB issued a Notice of Tax Return Change – Revised Balance imposing a late-filing penalty of $35,415.75, plus interest. Although appellants calculated an estimated tax penalty, FTB removed/reduced the underpayment of estimated tax penalty to zero.
4. FTB received payments of $410.73 and $15,914.47 on January 30, 2023.
5. FTB refunded appellants $410.73 on February 3, 2023.
6. Appellants filed a Reasonable Cause – Individual and Fiduciary Claim for Refund on October 7, 2024, requesting relief of the late-filing penalty based on reasonable cause.
7. FTB denied appellants' claim for refund.
8. This timely appeal follows.

DISCUSSION

Issue 1: Whether appellants have established 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 is due to reasonable cause and not due to willful neglect. (R&TC, § 19131(a).) The penalty is five percent of the tax for each month or fraction thereof between the due date of the return, without regard to any extension of time for filing, and the date it is filed, up to 25 percent of the tax. (*Ibid*.) When FTB imposes a penalty, the law presumes that the penalty was imposed correctly. (*Appeal of Belcher*, 2021-OTA-284P.) 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. (*Ibid*.)

Appellants do not contest the imposition or computation of the late-filing penalty. Instead, appellants request that the late-filing penalty be abated for reasonable cause because they were unaware of their filing requirement as nonresidents of California. However, even if the taxpayer is unaware of a filing requirement, ignorance of the law is not an excuse for failing to file a timely return. (*Appeal of Summit Hosting LLC*, 2021-OTA-216P.) Taxpayers who fail to acquaint themselves with the requirements of California tax law have not exercised ordinary business care and prudence. (*Ibid*.) Moreover, a belief no tax will be due generally does not constitute reasonable cause sufficient to abate a penalty. (*Appeal of Xie*, 2018-OTA-076P.)

Appellants also contend that they received a Schedule K-1 on September 15, 2022, showing California source income, after the tax deadline, and that they filed their return and paid the taxes due immediately after receiving the information. Appellants request a one-time allowance for their honest mistake.

As a preliminary matter, while the original due date for filing the 2021 return had passed, even if appellants received their Schedule K-1 only on September 15, 2022, that was within the extension period. Appellants' 2021 tax return was due on April 15, 2022. An automatic extension of six months is provided by regulation; however, the granting of the extension is conditioned solely on the return being filed during that extension, which sets an extended due date of October 15, 2022, for 2021 tax returns. (R&TC, § 18567; Cal. Code Regs., tit. 18, § 18567.) Therefore, the extended deadline for appellants to timely file a return had not expired when appellants received their Schedule K-1. However, because appellants did not file their return by the extended due date, and the extended due date is conditioned on filing by October 15, 2022, no filing extension existed, and the applicable deadline was April 15, 2022.

Appellants further claim it was impossible to pay the tax before receiving the Schedule K-1. However, difficulty in obtaining information and documentation, by itself, does not constitute reasonable cause to abate the late-filing penalty. (*Appeal of Xie*, *supra*.) Moreover, general difficulty in determining taxable income with exactitude does not constitute reasonable cause for filing late. (*Ibid*.) The exercise of ordinary business care and prudence required appellants to file a timely return with the best available information, and then subsequently file an amended return, if necessary. (*Ibid*.) Thus, appellants have not established reasonable cause to abate the late-filing penalty.

Pursuant to R&TC section 19132.5, effective for tax years beginning on or after January 1, 2022, an individual taxpayer may request a one-time abatement of a timeliness penalty. As the 2021 tax year is at issue here, this provision is inapplicable. Hence, the late-filing penalty cannot be abated based on a one-time abatement request.

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

Imposing interest is mandatory, and FTB cannot abate interest except where authorized by law. (R&TC, § 19101(a); *Appeal of Balch*, 2018-OTA-159P.) Interest is not a penalty; it is compensation for the use of money. (*Ibid*.) There is no reasonable cause exception to the imposition of interest. (*Ibid*.) Generally, to obtain relief from interest, taxpayers must qualify under R&TC sections 19104 (pertaining to an unreasonable error or delay by an FTB employee) or 21012 (pertaining to reasonable reliance on written advice from FTB).

Other than appellants' main argument that they had reasonable cause for untimely filing the 2021 tax return, appellants do not specify why they may be entitled to interest abatement. Appellants do not allege that either statutory provision for interest abatement apply to the facts of this case; and based on the arguments presented and the evidence in the record, OTA concludes that none of these statutory provisions apply. Therefore, appellants did not show that they are entitled to interest abatement.

HOLDINGS

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

DISPOSITION

FTB's action denying appellants' claim for refund for the 2021 tax year is sustained.

Signed by:
Kim Wilson
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Kim Wilson
Hearing Officer

We concur:

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Asaf Kletter
D17AEDDCAAB045B...
Asaf Kletter
Administrative Law Judge

DocuSigned by:
Erica Parker
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Erica Parker
Hearing Officer

Date Issued: 4/9/2026