OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **T. LEE AND** **S. LEE**	OTA Case No. 231214957

OPINION

Representing the Parties:

For Appellants:	Son Vu, Attorney S. Lee
For Respondent:	Amelia Breen, Attorney Jackie Zumaeta, Assistant Chief Counsel

A. KLETTER, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, T. Lee and S. Lee (appellants) appeal actions by respondent Franchise Tax Board (FTB) denying appellants' claims for refund of $22,525.75 for the 2021 tax year.[1]

Office of Tax Appeals (OTA) Panel Members Asaf Kletter, Steven Kim, and Kenneth Gast held an oral hearing for this matter in Cerritos, California, on February 12, 2026. 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).

ISSUE

Whether appellants have established reasonable cause to abate the late-filing penalty for the 2021 tax year.

[1] Appellants appealed FTB's denials of their claims for refund totaling $22,525.75, which consists of a late-filing penalty of $21,008.75 and an underpayment of estimated tax penalty (estimated tax penalty) of $1,517. Appellants request a refund of their final payment of $22,894.07; however, this payment exceeded the balance due, plus interest, by $214.59, which FTB agrees to refund to appellants.

Appellants self-assessed the estimated tax penalty on their 2021 California income tax return and fail to raise any specific argument on appeal showing that the estimated tax penalty should be abated under their circumstances. Therefore, the estimated tax penalty will not be discussed further.

FACTUAL FINDINGS

1. Appellants hired a CPA to prepare and file their joint 2021 California income tax return (return).
2. The CPA untimely filed the return on May 15, 2023, over a year after the due date of April 15, 2022. On the return, appellants self-assessed interest, and late-filing and late payment penalties of $2,863.
3. FTB later imposed a late-filing penalty of $21,008.75, plus applicable interest.
4. Appellants paid the balance due and timely filed a claim for refund seeking abatement of the penalty.
5. On November 22, 2023, FTB issued a Claim for Refund Denied letter to appellants.
6. Appellants filed this timely appeal.
7. On appeal, FTB provides appellants' 2021 federal Individual Master File (IMF) and Account Transcript, which shows that the IRS removed 50 percent of a federal late-filing penalty that was assessed for the 2021 tax year. FTB also supplies page 8C-5 of Publication 6209 (IMF Decoding Manual) to show that the IRS's 50 percent reduction of the federal late-filing penalty was not due to reasonable cause.[2]
8. On appeal, appellants provide correspondence between appellant S. Lee, other parties, and appellant's CPA to demonstrate that appellants believed their CPA would timely file their return; and documentation of their IRS penalty appeal for the 2021 tax year, including an IRS letter dated November 22, 2024, to support their assertion that the IRS abated the penalty for reasonable cause.
9. At the hearing, Cruz Saavedra, appellants' attorney representative for the IRS penalty appeal, testified concerning appellants' IRS penalty appeal.

DISCUSSION

R&TC section 19131(a) imposes a late-filing penalty on taxpayers who fail 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. When FTB imposes a late-filing penalty, it is presumed to have been correctly imposed, and the burden of proof is on taxpayers to show that reasonable cause exists to abate the penalty. (*Appeal of Cremel and Koeppel*, 2021-OTA-222P.) Appellants do not dispute that the return was untimely filed or the penalty calculation. Instead, appellants argue that the penalty should be abated for reasonable cause.

[2] Section 8C, Master Files Codes, of the IMF Decoding Manual is available at: https://www.irs.gov/pub/irs-6209/2021-section8c-master-file-codes.pdf.

To establish reasonable cause, taxpayers must provide credible and competent evidence establishing that the failure to timely file a return occurred despite the exercise of ordinary business care and prudence. (*Appeal of Cremel and Koeppel*, *supra*.)

Illness or other personal difficulties may be considered reasonable cause if taxpayers present credible and competent proof that they were continuously prevented from filing a tax return. (*Appeal of Head and Feliciano*, 2020-OTA-127P.) When taxpayers allege reasonable cause based on an incapacity due to their own illness or the illness of an immediate family member, the duration of the incapacity must approximate that of the tax obligation deadline. (*Ibid*.)

Taxpayers have a personal and non-delegable duty to file a tax return by the due date, and taxpayers' reliance on an agent to timely file a tax return does not constitute reasonable cause for the late filing of the return. (*U.S. v. Boyle* (1985) 469 U.S. 241, 252 (*Boyle*); *Appeal of Fisher*, 2022-OTA-337P.) A taxpayer may reasonably rely on an accountant or attorney for substantive advice on a matter of tax law, such as whether a liability exists. (*Boyle*, *supra*, at p. 251.) However, reliance on an agent to timely file a tax return is not reliance on substantive advice, because one does not have to be a tax expert to know that tax returns have fixed filing dates. (*Ibid*.)

On appeal, appellants provide no evidence of their own illness or personal difficulties. Instead, appellants assert that their CPA was hospitalized and incapacitated and that appellants were not notified in time to engage someone else to complete the tax return by the deadline. In appellants' reply brief, they assert that "in conversations [the CPA] had given us reason to believe the penalty would be abated due to [the CPA's] illness."[3] However, reliance on an agent to file a tax return is not reasonable cause for the late filing of the return. (*Boyle*, *supra*, 469 U.S. at p. 252; *Appeal of Fisher*, *supra*.) "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." (*Appeal of Fisher*, *supra*, citing *Boyle*, *supra*, 469 U.S. at p. 252.) Thus, appellants had a non-delegable obligation to timely file the return.

Additionally, appellants have failed to provide credible and competent evidence to support their assertion that they were unable to timely replace their CPA. (See *Specht v. U.S.*, 661 Fed.App'x 357 (6th Cir. 2016) [fiduciary who knew the filing deadline and understood that

[3] Appellants have not shown that they relied on substantive advice from their CPA on a matter of tax law. Appellants provide correspondence with the CPA, which shows only that after the CPA untimely submitted the return, appellants asked the CPA for an update on a California penalty and whether a form should be submitted to request abatement.

there would be consequences for the failure to timely file failed to show reasonable cause where she was able to file the return or replace counsel].) While appellants provide correspondence with the CPA, the correspondence is not dated between the filing deadline and May 15, 2023, when the CPA untimely filed the return, and appellants provide no other evidence of steps taken to timely file the return on or before the deadline.[4]

Appellants next assert that the IRS abated 50 percent of the federal late-filing penalty for reasonable cause and that California should follow the IRS's reasonable cause finding. It is undisputed that the IRS removed 50 percent of the federal late-filing penalty for the 2021 tax year. Mr. Saavedra testified that he represented appellants before the IRS's Independent Office of Appeals for the 2021 tax year[5] and argued that penalty abatement for reasonable cause was justified based on appellants' CPA experiencing medical and computer issues.[6]

The IRS letter dated November 22, 2024, which removed 50 percent of the federal late-filing penalty for the 2021 tax year, states in relevant part:

> "[The IRS] finished reviewing your request to remove or reduce the penalties assessed against you. Based on the facts presented, including any information you submitted, we're pleased to advise you that we recommend removing [50 percent] of the [total federal late-filing] penalty. We sustained the remaining [federal late-filing] penalty of [50 percent] for the following reasons:
>
> A third party's illness does not meet reasonable cause even if the taxpayer reaches out to the third-party multiple times. The courts have held that a person must have checks and balances in place to ensure that their tax obligations are being met, in a correct and timely manner."

Mr. Saavedra testified that despite the letter, the IRS removed 50 percent of the total federal late-filing penalty because appellants' sympathetic circumstances were distinguishable from *Boyle*. Mr. Saavedra also testified that, in his view, the only issue raised in the IRS appeal was reasonable cause, the IRS's only authority to reduce federal late-filing penalty is reasonable cause, and, based on the IMF Decoding Manual, the federal reduction was for reasonable cause. Mr. Saavedra also asserted that the IRS determined that 50 percent of the federal late-filing penalty should be removed based on Internal Revenue Manual (IRM) sections

[4] Prior to the return's due date, the CPA, via email, exchanged tax information with appellants, verified their proper filing status, and on April 2, 2022, confirmed that she had not filed a return.

[5] Appellants filed the initial request for penalty abatement.

[6] Appellants provided their request for abatement in which they asserted they underwent a dissolution of their marriage and dealt with an illness of an immediate family member that affected the timely filing of the federal return. In their request, they also sought relief based on the IRS's First Time Abate policy.

that concern the IRS Appeals Officer's ability to settle the penalty amount based on the hazards of litigation and for less than the full amount assessed.

Considering the record before OTA, this Panel finds that appellants have not established that the IRS reduced 50 percent of the federal late-filing penalty for reasonable cause. The IRS letter dated November 22, 2024, recommended removing 50 percent of the federal late-filing penalty "[b]ased on the facts presented, including any information you submitted." But this statement does not indicate that appellants established reasonable cause based on the CPA's illness because the IRS letter then states that 50 percent of the remaining federal late-filing penalty is sustained in full because a third-party's illness does not meet reasonable cause. Although the IRS's Independent Office of Appeals has authority to remove penalties for various reasons, including for reasonable cause, hazards of litigation, and pursuant to its assessed penalty settlement authority,[7] the IRS letter does not specifically indicate why the penalty was reduced by 50 percent.[8] Instead, the IRS letter is clear that reasonable cause has not been established, at least based on the CPA's illness, and as Mr. Saavedra suggested, the IRS may have reduced the penalty for other reasons, such as hazards of litigation, or pursuant to the IRS Appeals Officer's settlement authority.[9]

Based on the foregoing, appellants fail to provide credible and competent evidence demonstrating reasonable cause for the failure to timely file the return. (*Appeal of Cremel and Koeppel*, *supra*.) Therefore, the late-filing penalty cannot be abated.

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[7] See IRM sections 8.11.4.2.6, 8.11.1.2.7 [reasonable cause], 8.11.1.2.7.5 [hazards of litigation], 8.11.1.2.3 [settlement authority].

[8] IRM section 8.11.4.2.7 provides that the IRS Appeals Officer prepares an Appeals Case Memo, which should outline the facts and circumstances supporting sustention or abatement of the penalty.

[9] FTB asserts that the IMF Decoding Manual shows that the IRS's 50 percent reduction of the federal late-filing penalty was not due to reasonable cause. However, page 8C-5, on which FTB relies, is inapplicable to this appeal. Page 8C-2 states that IMF reason codes are only used with Transaction Codes (TCs) 29X, and the IMF in this appeal shows TCs 166 and 161 for the assessment and reduction, respectively, of the federal late-filing penalty. Page 8C-5 also indicates that, as applicable, reason codes are used both where there is a penalty adjustment in the reasonable cause category <u>and</u> where there is a penalty charge that is not in the reasonable cause category. However, the IMF here shows no reason codes and therefore does support appellants' belief that the IRS reduction was for reasonable cause.

HOLDING

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

DISPOSITION

FTB agrees to refund appellants' excess payment of $214.59. In all other respects, FTB's actions denying appellants' claims for refund are sustained in full.

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Asaf Kletter
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Asaf Kletter
Administrative Law Judge

We concur:

DocuSigned by:
Steven Kim
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Steven Kim
Administrative Law Judge

DocuSigned by:
Kenny Gast
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Kenneth Gast
Administrative Law Judge

Date Issued: 3/17/2026