OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Consolidated Appeals of: **M. KNIGHT AND** **T. KNOWLES**	OTA Case Nos. 240315738, 240516029

OPINION

Representing the Parties:

For Appellants: Cameron Davidson, Attorney

For Respondent: Jeffrey Gates, Attorney

For Office of Tax Appeals: Neha Garner, Attorney

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. Knight and T. Knowles (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants' claims for refund of $2,089.44[1] for the 2019 and 2020 taxable years and $2,644.75 for the 2021 taxable 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. Does OTA have jurisdiction to consider appellants' claim for refund for 2021?
2. Have appellants established reasonable cause to abate the late-filing penalties?

[1] FTB denied appellants' claims for refund for 2019 and 2020 in the amount of $2,089.44. It is unclear from the record how this amount was calculated. The amount at issue involves late-filing penalties of $196.25 for taxable year 2019 and $1,429 for taxable year 2020. Appellants do not separately contest penalties for underpayment of estimated tax or interest.

FACTUAL FINDINGS

2019 Taxable Year

1. Appellants filed their 2019 California tax return late on April 15, 2023, reporting total tax of $3,674, withholdings of $2,889, a self-assessed penalty for underpayment of estimated tax (estimated tax penalty) of $16,[2] and a balance due of $801.
2. On May 11, 2023, FTB issued a State Income Tax Balance Due Notice reflecting a late-filing penalty of $196.25.
3. Appellants paid the outstanding balance and filed with FTB a request for abatement of the late-filing penalty, which FTB denied on January 22, 2024.

2020 Taxable Year

4. Appellants filed their 2020 California tax return late on April 15, 2023, reporting total tax of $10,019, withholdings of $4,303, and a balance due of $5,716.
5. On May 11, 2023, FTB issued a State Income Tax Balance Due Notice reflecting a late-filing penalty of $1,429.
6. Appellants paid the outstanding balance and filed with FTB a request for abatement of the late-filing penalty, which FTB denied on January 22, 2024.

2021 Taxable Year

7. On April 15, 2022, appellants remitted an extension payment of $20,000. Appellants filed their 2021 California tax return late on November 29, 2022, reporting total tax of $43,238, withholdings of $12,659, estimated tax payments of $20,000, and a balance due of $10,579.
8. On February 27, 2023, FTB sent an Income Tax Due Notice assessing a late-filing penalty of $2,644.75. FTB received three payments of $1,000 on April 14, 2023, February 15, 2024, and March 15, 2024, respectively. FTB also received a payment of $585.55 on January 16, 2024, leaving an outstanding balance of $11,141.88 as of June 25, 2024.[3]
9. Appellants filed with FTB a request for abatement of the late-filing penalty, which FTB denied on December 19, 2023.

[2] The estimated tax penalty is not at issue on appeal and will not be addressed in this Opinion.

[3] Total tax of $43,238 + late-filing penalty of $2,644.75 + an installment payment agreement fee of $34 + interest of $1,469.68 - withholdings and payments of $36,244.55.

Appeals to OTA

10. On March 18, 2024, appellant filed separate appeals of FTB's denials of their claims for refund for taxable years 2019 to 2020 and 2021. OTA consolidated the appeals on May 9, 2024.

DISCUSSION

Issue 1: Does OTA have jurisdiction over appellants' claim for refund for taxable year 2021?

OTA is an independent administrative agency whose jurisdiction to hear taxpayer's appeals is limited by its enabling legislation. (*Appeal of Eric H. Liljestrand Irrevocable Trust*, 2019-OTA-012P.) OTA's enabling legislation, the Taxpayer Transparency and Fairness Act of 2017 (Stats. 2017, Chap. 16), provides that OTA has duties, powers, and responsibilities necessary or appropriate to conduct appeals of certain tax and fee programs. (Gov. Code, § 15672; *Appeal of Body Wise International, LLC*, 2022-OTA-340P.) As relevant to this appeal, this includes R&TC section 19324 which permits taxpayers to appeal from FTB's actions on a claim for refund. Similarly, OTA's Rules for Tax Appeals provide that OTA has jurisdiction to hear and decide an appeal that has been timely filed after FTB mails a notice of action on cancellation, credit or refund, or any other notice which denies any portion of a "perfected" claim for a refund of tax, penalties, fees, or interest. (Cal. Code Regs., tit. 18, § 30103(a)(3).)

For a claim for refund to be "perfected," all amounts due for the taxable year, including tax, penalties, and interest must be paid. Internal Revenue Code section 6665(a)(2), incorporated by reference into California law by R&TC section 19164(g),[4] provides that any reference to "tax" shall be deemed also to refer to the additions to the tax, additional amounts, and penalties. (See also *Appeal of Leebow*, 2025-OTA-426P.) Similarly, R&TC section 19101(c)(1) provides that any reference to "tax" shall be deemed also to refer to interest imposed on that tax. A claim for refund that is otherwise valid under R&TC section 19322, but where the entire tax assessed or asserted has not been paid, shall be a claim only for purposes of tolling the time periods set forth in R&TC section 19306. (R&TC, § 19322.1(a).) For all other purposes, the claim shall be deemed filed on the date that full payment of the tax is made. (*Ibid*.)

FTB argues that OTA has no jurisdiction over appellants' 2021 appeal because their balance remains outstanding, and their claim for refund is therefore not perfected. Appellants do not dispute or even address the issue of jurisdiction over taxable year 2021. OTA's record

[4] R&TC section 19164(g) was subsequently renumbered to R&TC section 19164(h) effective June 27, 2024.

reflects that when appellants filed their 2021 appeal on March 18, 2024, they had an outstanding balance of $11,141.88, which had not then been paid. Thus, appellants' 2021 claim for refund was not yet perfected when appellants filed their appeal. Consequently, OTA does not have jurisdiction to determine whether they are entitled to abatement and refund of the late-filing penalty for 2021.

Issue 2: Have appellants 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.) When FTB imposes a penalty, the law presumes that the penalty was imposed correctly, and the burden of proof is on the taxpayer to establish otherwise. (*Appeal of Xie, 2018-OTA-076P.*) To overcome the presumption of correctness attached to the penalty, a taxpayer must provide credible and competent evidence supporting a claim of reasonable cause; otherwise, the penalty cannot be abated. (*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 Belcher*, 2021-OTA- 284P.)

R&TC section 19131 provides that a late-filing penalty shall be imposed when a taxpayer fails to file a tax return on or before its due date, unless the taxpayer establishes that the late filing is due to reasonable cause and not due to willful neglect. Each taxpayer has a personal, non-delegable obligation to file a tax return by the due date. (*Appeal of Quality Tax & Financial Services, Inc.*, 2018-OTA-130P.)

Here, appellants' 2019 tax return was due on April 15, 2020, and appellants did not file their return until April 15, 2023, more than 33 months after the due date.[5] Appellants' 2020 tax return was due on May 17, 2021, and appellants did not file their return until April 15, 2023, more than 22 months after the due date. Accordingly, FTB correctly imposed late-filing penalties of $196.25 and $1,429.00 for the 2019 and 2020 taxable years, respectively. Since appellants' returns were filed more than six months after the due date, the penalty was correctly calculated at 25 percent. (See R&TC, § 19131(a).)

There is no dispute that appellants filed their tax returns after the due date. The issue on appeal is whether appellants have established reasonable cause for the late filing of their

[5] Due to COVID-19, FTB postponed the original filing deadline for 2019 tax returns to July 15, 2020. (See *Appeal of Nguyen*, 2025-OTA-333P.)

returns. Appellants assert that appellant Knight is a bookkeeper and that she "allowed" her husband, appellant Knowles, to file their joint returns as he had prepared his own tax returns prior to their marriage. Appellants contend that appellant Knowles informed his wife, appellant Knight, that he had filed the returns when he did not. Appellants assert that appellant Knowles suffered from cognition issues, "rendering him unable to focus on the task of preparing the couple's tax returns." After some insistence by appellant Knight, appellant Knowles allegedly admitted that he failed to file taxes over several years and provided "several IRS notices" to appellant Knight regarding missed tax filings.

Appellants have a non-delegable duty to timely file their returns, and reliance on another to file a return by the due date does not establish reasonable cause. (*Appeal of Quality Tax & Financial Services, Inc.*, *supra*.) Appellant Knowles was aware that tax returns had not been filed, and appellants have not provided credible evidence that his cognition issues were so severe that he could not have filed timely tax returns, requested his wife do so on appellants' behalf, or seek the help of an outside tax preparer. Between the two of them, appellants had substantial income for taxable years 2019 and 2020, rendering it more likely that appellants satisfied certain aspects of their obligations rather than complying with their tax filing obligations. (See *Appeal of Belcher*, 2021-OTA-284P.) While appellants' allege that appellant Knowles had cognition issues and lied to appellant Knight about filing tax returns he had not filed, appellant Knight knew she had not reviewed or signed at least two years of tax returns at issue yet did nothing more to follow up to ensure returns were filed and that tax obligations were paid. Reasonably prudent persons under similar circumstances would have followed up to ensure the tax returns were actually filed and that taxes were paid.

OTA finds appellants have not established reasonable cause to abate the late-filing penalties for taxable years 2019 and 2020. Since appellants' duty to timely file is non-delegable, and appellants have not provided evidence to demonstrate reasonable cause, OTA finds that appellants have failed to meet their burden of proof.

HOLDINGS

1. OTA does not have jurisdiction over appellants' unperfected claim for refund for taxable year 2021.
2. Appellants have not established reasonable cause to abate the late-filing penalties for taxable years 2019 and 2020.

DISPOSITION

OTA sustains FTB's actions denying appellants' claims for refund for 2019 and 2020.

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Teresa A. Stanley
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Teresa A. Stanley
Administrative Law Judge

We concur:

Signed by:
Josh Lambert
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Josh Lambert
Administrative Law Judge

DocuSigned by:
Josh Aldrich
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Josh Aldrich
Administrative Law Judge

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