



### FACTUAL FINDINGS

1. Appellant had a health condition requiring surgery in September 2014. Appellant required a period of recuperation thereafter, which appellant asserts lasted almost six months.
2. Appellant's 2015 California income tax return was due on April 15, 2016.
3. In June 2016, appellant was notified by the Internal Revenue Service (IRS) that his federal return for the 2013 tax year had not been received.
4. Appellant filed a joint 2015 tax return with his spouse on January 30, 2017. Appellant's return reported total tax due of \$6,045, withholding credit of \$729, estimated tax payments of \$1,200, and a balance due of \$4,116. Appellant and his spouse remitted a payment of \$4,666 with their return.
5. Respondent accepted appellant's return as filed, and issued a notice imposing an underpayment of estimated tax penalty of \$56.45, a late-filing penalty of \$1,209, and accrued interest. Appellant subsequently paid these liabilities.
6. Appellant submitted a letter to respondent requesting abatement of the late-filing penalty for the 2015 tax year based on his 2014 health issue, misinformation from his accountant, and the need to prioritize the filing of his S corporation's returns before his personal return. Respondent treated this letter as a claim for refund.
7. Respondent denied appellant's claim for refund and this timely appeal followed.

### DISCUSSION

When the FTB imposes a penalty, the law presumes that the penalty was imposed correctly. (*Appeal of Michael E. Myers*, 2001-SBE-001, May 31, 2001.) The burden of proof is on the taxpayer to show that reasonable cause exists to support an abatement of the penalty. (*Appeal of David A. and Barbara L. Beadling*, 77-SBE-021, Feb. 3, 1977.) To overcome the presumption of correctness attached to the penalty, appellant must provide credible and competent evidence supporting a claim of reasonable cause; otherwise the penalty cannot be abated. (*Appeal of James C. and Monablanche A. Walshe*, 75-SBE-073, Oct. 20, 1975.)

R&TC section 19131 imposes a late-filing penalty on a taxpayer who fails 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. The late-filing penalty is calculated at 5 percent of

the tax for each month or fraction thereof that the return is late, with a maximum penalty of 25 percent of the tax.

Here, appellant filed his 2015 tax return on January 30, 2017, more than 21 months after the due date for the return. The only question before us is whether appellant had reasonable cause for the late filing of his return so that the penalty may be abated. Appellant makes three general assertions as to why his return was filed late: 1) his health issue in 2014; 2) misinformation from his accountant; and 3) the loss or destruction of paperwork.<sup>3</sup>

1) Personal Illness

Courts have found that in certain situations the illness of a taxpayer can constitute reasonable cause for the late filing of a return, if that illness prevented the taxpayer from filing his return. Reasonable cause will not exist, however, when the taxpayer does not timely file his return but is able to conduct his other business affairs, despite the illness. (*Ruggeri v. Commissioner*, T.C. Memo. 2008-300.)

Appellant suffered a health condition in September 2014 that required surgery and a period of recovery. Appellant asserts that the recovery period was no more than six months, and therefore the debilitating nature of this illness appears to have subsided more than a year before the filing due date for his 2015 tax return.<sup>4</sup> This illness and its recovery period, which ended well in advance of the filing due date, do not constitute reasonable cause for the late filing of appellant's 2015 tax return. (Contra. *Harris v. Commissioner*, T.C. Memo. 1969-49 [severe ill health including a stroke, paralysis, heart attack, cancer, and other ailments severely restricting the petitioner's activities during the year the returns were due constituted reasonable cause].) Furthermore, appellant has not explained why his spouse was unable to take responsibility for retaining a tax professional to prepare and file the couple's 2015 return in a timely manner. (See *Appeal of Michael J. and Diane M. Halaburka*, 85-SBE-025, Apr. 9, 1985 [no evidence that at all relevant periods both spouses were prevented from filing their return due to their son's illness].)

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<sup>3</sup> Appellant also asserts that he has a good filing history prior to the 2013 tax year. However, there is no provision in California law permitting abatement of the late-filing penalty based on a history of compliance.

<sup>4</sup> Appellant notes that he still has "restricted activity," but also indicates that he was able to resume his business efforts after his recovery period.

## 2) Reliance on a Preparer

Appellant asserts that he relied on his accountant to file his returns, and was told that his returns were filed when they had not been. “When an accountant or attorney advises a taxpayer on a matter of tax law, such as whether a liability exists, it is reasonable for the taxpayer to rely on that advice,” but “[t]he failure to make a timely filing of a tax return is not excused by the taxpayer's reliance on an agent, and such reliance is not ‘reasonable cause’ for a late filing.” (*United States v. Boyle* (1985) 469 U.S. 241, 251-252.)

In *Boyle*, the taxpayer provided his preparer with all the relevant information and records necessary to file the return, and contacted the preparer regularly to inquire about the status of the return. The taxpayer was assured by the preparer that the return would be filed timely, but the taxpayer later received notice from the IRS indicating that the return was not timely filed. Despite the taxpayer’s understanding that the return was going to be timely filed, the U.S. Supreme Court found that the taxpayer’s reliance on his preparer to timely file the return did not constitute reasonable cause. Likewise, appellant’s reliance on his tax preparer to meet a clear statutory deadline does not constitute reasonable cause in this appeal. Furthermore, appellant indicates that he was made aware that his accountant had not been filing returns for him when, on or about June 20, 2016, he received notice from the IRS of a missing 2013 return. As of that date, appellant still had sufficient time to file within the extended filing deadline of October 15, 2016, but failed to do so.

## 3) Difficulty in Acquiring Records

Appellant contends on appeal that his former accountant had lost or destroyed relevant paperwork, and that it took him time to locate copies of receipts. However, the difficulty in obtaining necessary information (*Appeal of J.B. and P.R. Campbell*, 85-SBE-112, Oct. 9, 1985), the complexity and problems in accumulating the information necessary to complete a return (*Appeal of Incom International, Inc.*, 82-SBE-053, Mar. 31, 1982), and a taxpayer's difficulty in determining income with exactitude (*Appeal of Roger W. Sleight*, 83-SBE-244, Oct. 26, 1983; *Appeal of Avco Financial Services, Inc.*, 79-SBE-084, May 9, 1979) do not establish reasonable cause.<sup>5</sup>

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<sup>5</sup> Appellant stated in his claim for refund that the preparation and filing of his personal returns also were delayed because he needed to sequentially prepare and file past-due tax returns for his S corporation before filing his personal tax returns. While appellant is free to determine the priority of his activities, sacrificing the timely filing of

HOLDING

Appellant has not shown reasonable cause for the late filing of his 2015 tax return.

DISPOSITION

Respondent's action in denying appellant's claim for refund for the 2015 tax year is sustained.

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*John O Johnson*

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John O. Johnson

Administrative Law Judge

We concur:

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*D. Bramhall*

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Douglas Bramhall

Administrative Law Judge

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*Neil Robinson*

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Neil Robinson

Administrative Law Judge

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his personal return to pursue other business affairs does not constitute reasonable cause. (*Appeal of William T. and Joy P. Orr*, 68-SBE-10, Feb. 5, 1968.)