

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 18011061
)
LAURENCE G. COLLIER AND) Date Issued: May 31, 2018
NINA J. COLLIER)
_____)

OPINION

Representing the Parties:

For Appellant:	Tax Appeals Assistance Program (TAAP) ¹
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For Respondent:	David Muradyan, Tax Counsel III
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M. Geary, Administrative Law Judge: Pursuant to California Revenue and Taxation Code section 19324,² Laurence G. Collier and Nina J. Collier (appellants) appeal an action by the Franchise Tax Board (FTB) denying their claim for refund of \$4,612.50³ for the 2015 tax year.

Appellant waived his right to an oral hearing. Therefore, we decide the matter based on the written record.

ISSUE

Whether appellants are liable for the late-filing penalty.

FACTUAL FINDINGS

1. Appellants did not file their 2015 California income tax return or pay their 2015 California income tax in full by the April 15, 2016 due date.
2. Appellants had withholding credits for 2015 totaling \$7,129.

¹ Appellant filed his appeal letter. Mark Suarez of the TAAP filed appellant's reply brief.

² Unless otherwise indicated, all "section" references are to sections of the California Revenue and Taxation Code.

³ Appellants' claim requests a refund of \$3,515.93 and asks FTB to abate the late-filing penalty. The correct penalty amount is \$4,612.50, and FTB states in its brief that this is the amount at issue.

3. On October 15, 2016, appellants made an estimated 2015 California income tax payment of \$19,950.
4. On or about February 24, 2017, appellants filed their 2015 California income tax return reporting taxable income of \$335,814, exemption credits of \$220, excess state disability insurance withholding of \$385, and \$25,964 tax due. According to their return, appellants were entitled to a \$1,500 refund. FTB did not pay the refund.
5. On March 27, 2017, FTB issued to appellants a “Notice of Tax Return Change – Revised Balance,” which informed appellants that FTB added a late-filing penalty of \$4,612.50 and \$403.43 of interest to their liability. The notice instructed appellants to pay the \$3,515.93 balance due by April 11, 2017.
6. On April 25, 2017, appellants paid \$3,515.93.⁴ On April 26, 2017, appellants filed a claim for refund of that same amount.
7. By letter dated May 26, 2017, FTB denied appellants’ claim because it concluded that appellants had not established their failure to file a timely return was due to reasonable cause and not to willful neglect. This timely appeal followed.

DISCUSSION

Generally, individuals who file their California tax returns on a calendar year basis are required to file their return and pay the taxes due on or before April 15 following the close of the taxable year. (§§ 18566 and 19001.) With certain limitations not relevant here, section 19131 requires FTB to impose a late-filing penalty when a taxpayer fails to file his or her return on or before its due date, unless the taxpayer establishes that the late filing was due to reasonable cause and not due to willful neglect. FTB may grant a taxpayer up to six additional months to file a tax return (§18567(a)), and the corresponding regulation provides for an automatic six-month extension without a written request (Cal. Code Regs., tit. 18, § 18567). However, if the return is not filed within six months of the original due date, in this case by October 15, 2016, no valid extension exists and the late-filing penalty amount is computed by reference to the original due date of the return. (*Ibid.*)

⁴ Because appellants did not pay the balance due by April 11, 2017, additional interest of \$11.21 accrued. According to the tax year detail provided by FTB, appellants paid this amount on May 17, 2017, leaving a zero balance.

Appellants argue that their failure to timely file their 2015 return was due to reasonable cause and not to willful neglect. In support, they specifically point to the following alleged circumstances: (1) Ms. Collier's rheumatoid arthritis and "other [unspecified] issues;" (2) a costly move from Sacramento to Oceanside in July 2015; (3) Ms. Collier's subsequent fall and resulting broken arm in August 2015, which required surgical repair; (4) months of physical therapy for Ms. Collier; (5) a second costly move in November 2015; (6) Appellants' Chapter 13 bankruptcy petition filed on April 5, 2016 (dismissed approximately three months later); (7) Mr. Collier's job loss in June 2016; (8) a six-month extension of time to file their tax return (by October 15, 2016); and (9) the late payment penalty abatement allowed for the year at issue by the Internal Revenue Service (IRS).⁵ Appellants also appear to argue that FTB's authority to allow a first-time abatement consistent with what the IRS did for appellants is evidenced by a regulation that was proposed and discussed in 2011 but never enacted.

To establish reasonable cause, the taxpayer "must show that the failure to file timely returns occurred despite the exercise of ordinary business care and prudence, or that cause existed as would prompt an ordinary intelligent and prudent businessman to have so acted under similar circumstances." (*Appeal of Howard G. and Mary Tons*, 79-SBE-027, Jan. 9, 1979.)⁶ Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Aaron and Eloise Magidow*, 82-SBE-274, Nov. 17, 1982; *Appeal of James C. and Monablancie A. Walshe*, 75-SBE-073, Oct. 20, 1975.)

The death or serious illness of a taxpayer or a member of a taxpayer's immediate family may be reasonable cause for a failure to file timely returns. (See *United States v. Boyle* (1985) 469 U.S. 241, 243, fn 1.) However, the death or illness must be sufficiently and continuously disruptive to prevent a taxpayer's compliance with the law. (*Matter of Carlson* (7th Cir. 1997) 126 F.3d 915, 923; see also *Estate of Stuller, et al. v. U.S.* (7th Cir. 2016) 811 F.3d 890 [holding that a taxpayer who had suffered through many tragic events in the 15 months before her return

⁵ For the purposes of our analysis, we assume the events appellants rely on occurred on or about the dates described by appellants or reflected in the documents provided by them.

⁶ Pursuant to the Office of Tax Appeals Rules for Tax Appeals, Cal. Code Regs., tit. 18, § 30501(d)(3), precedential opinions of the State Board of Equalization (BOE) that were adopted prior to January 1, 2018, may be cited as precedential authority to the Office of Tax Appeals unless a panel removes, in whole or in part, the precedential status of the opinion as part of a written opinion that the panel issues pursuant to this section. BOE opinions are generally available for viewing on the BOE's website: <http://www.boe.ca.gov/legal/legalopcont.htm#boeopinion>.

was due had not established reasonable cause because the events were not sufficiently severe and continuous to make it “virtually impossible” to comply with the filing requirements].⁷)

We acknowledge that the circumstances described by appellants can be stressful in financial and other ways, but such circumstances do not necessarily amount to good cause for failing to file a tax return. Appellants have not established how Ms. Collier’s medical issues or either of appellants’ moves in 2015 prevented them from timely filing the return that was not due until many months later, on October 15, 2016. Likewise, appellants do not explain how their short-lived bankruptcy proceeding (April 5, 2016, through July 12, 2016) and Mr. Collier’s June 2016 job loss prevented them from filing their return months later. Some of appellants’ arguments suggest that they are trying to show why they did not timely pay their taxes, but timely payment is not the issue. FTB imposed a penalty for late filing, not late payment. The automatic extension of time to file their tax return by October 15, 2016 expired and ceased to exist after appellants failed to file their return by that date. Accordingly, FTB properly computed the penalty amount based upon the original due date of the return.

Finally, regarding appellants’ reference to the IRS’s abatement of the federal late-filing penalty initially imposed against appellants, we note that the IRS administers a program called “First Time Abate,” through which the IRS abates first-time timeliness penalties if a taxpayer has timely filed returns and paid taxes due for the preceding three years. FTB has no such program and, as previously stated, California law requires that we find that the failure to file was due to reasonable cause and not willful neglect to abate the late payment penalty.⁸ Appellants’ argument that we should abate the penalty based on a regulation that was considered by FTB and discussed with interested parties in 2011, but never enacted, lacks legal support. We cannot abate the penalty based on the IRS’s abatement pursuant to its First Time Abate program, and appellants have not established any other grounds for abatement. Based on the evidence before

⁷ In *Estate of Stuller*, a January 2003 fire destroyed taxpayer’s home and killed her husband. She underwent a subsequent hospitalization for double pneumonia and later suffered from depression. A former employee embezzled from her, and trust and probate records needed to manage her affairs were missing. In addition, taxpayer was generally unfamiliar with business matters because her late husband usually handled them. Nevertheless, the court noted that appellant was able to attend to many of her business affairs but, for apparently unexplained reasons, was unable to deliver the few remaining records (bank statements) her accountant required to complete the subject return.

⁸ The California Legislature has considered and declined to adopt bills that would change California law to allow a first-time abatement for taxpayers with a history of filing and payment compliance. (See for example, Assembly Bill No. 1777 (2013-2014 Reg. Sess.).)


us, we find that appellants have not carried their burden to establish that the late filing was due to reasonable cause and not due to willful neglect.

HOLDING

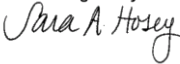
Appellants have not proved their failure to timely file their 2015 California income tax return was due reasonable cause and not to willful neglect. Therefore, they are liable for the late-filing penalty as determined by FTB.

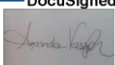
DISPOSITION

We sustain FTB's denial of appellants' claim for refund.

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Michael F. Geary
Administrative Law Judge

We concur:

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Sara A. Hosey
Administrative Law Judge

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Amanda Vassigh
Administrative Law Judge