

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
KEIKO S. BOONE

) OTA Case No. 18011447
)
) Date Issued: June 7, 2019
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)
)

OPINION

Representing the Parties:

For Appellant: Christopher Engelmann, Tax Appeals Assistance Program

For Respondent: Bradley J. Coutinho, Tax Counsel
Natasha Page, Tax Counsel IV

N. DANG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Keiko S. Boone (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund for the 2011 tax year.

Office of Tax Appeals Administrative Law Judges Nguyen Dang, Kenneth Gast, and Daniel Cho held an oral hearing for this matter in Los Angeles, California, on April 23, 2019. At the conclusion of the hearing, the record was closed and this matter was submitted for decision.

ISSUE

Whether appellant has established that the late-filing penalty for the 2011 tax year should be abated.

FACTUAL FINDINGS

1. On February 29, 2012, appellant underwent ambulatory surgery to repair a fractured ankle, after which she was released from the surgery center on the same day.
2. At her post-surgical patient evaluation on June 15, 2012, appellant’s physician noted, in relevant part, that the nerves and blood vessels in her foot were intact, the surgical incision had completely healed, and there were no signs of infection. Appellant’s physician also recommended that she begin physical therapy twice a week.

3. On April 15, 2013, appellant late-filed her 2011 California Resident Income Tax Return.
4. Thereafter, FTB issued a Notice of Proposed Assessment (NPA) for \$2,959 additional tax, plus applicable interest, and a late-filing penalty of \$585.25 for the 2011 tax year.
5. Appellant paid the liability stated in the NPA, and filed a claim for refund seeking abatement of the late-filing penalty.
6. FTB issued a Notice of Action denying appellant's refund claim, and this timely appeal followed.

DISCUSSION

California imposes a penalty for the failure to file a return on or before the due date, unless it is shown that the late filing was due to reasonable cause and not due to willful neglect. (R&TC, § 19131(a).) The standard of reasonable cause requires the taxpayer to establish that the failure to timely file occurred despite the exercise of ordinary business care and prudence. (*United States v. Boyle* (1985) 469 U.S. 241, 246.)¹ As applied to situations involving illness or other personal difficulty, the standard of reasonable cause requires the taxpayer to present competent and credible proof that he or she was continuously prevented from filing a timely return. (*Appeal of Halaburka* (85-SBE-025) 1985 WL 15809; *Appeal of Seaman* (75-SBE-080) 1975 WL 3564.) The burden of proof is on the taxpayer to establish reasonable cause by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(c); *Appeal of Beadling* (77-SBE-021) 1977 WL 3831.)

Appellant contends that during her post-surgery rehabilitation, she had limited physical mobility and severe pain, which restricted her ability to care for herself and caused her to experience emotional instability and significant mental impairment. Appellant also contends that she suffered from reduced sleep, and was under constant stress “caused by doctors, hospital bills, insurance, and pain.” All these factors, appellant argues, prevented her from timely filing her 2011 return. Alternatively, appellant argues that the penalty should be abated based on her good filing history.

The standard for reasonable cause based on illness is a high one. Appellant must demonstrate that, as a result of her condition, it was more than just merely inconvenient or

¹ Because the relevant language of R&TC section 19131 pertaining to the reasonable cause exception is patterned after Internal Revenue Code section 6651, the federal courts' interpretation of the “reasonable cause” standard is persuasive authority in determining the proper construction of the California statute. (*Andrews v. Franchise Tax Bd.* (1969) 275 Cal.App.2d 653, 658; *Rihn v. Franchise Tax Bd.* (1955) 131 Cal.App.2d 356, 360.)

burdensome for her to timely file, but that her condition “continuously prevented” her from doing so. (*Appeal of Halaburka, supra.*) This necessitates a showing that appellant’s condition was so severe as to render her utterly incapable of exercising ordinary business care and prudence. (See *Tamberella v. Commissioner*, T.C. Memo. 2004-47.) For example, reasonable cause was found where a taxpayer’s children were seriously ill with pneumonia, his wife had a ruptured appendix requiring an emergency operation, the taxpayer’s personal records were located out-of-state, and he suffered a mental and physical collapse necessitating hospitalization, all within a six-month period. (*Hayes v. Commissioner*, T.C. Memo. 1967-80.) Reasonable cause was also found where the taxpayer was hospitalized repeatedly due to various severe medical issues including stroke, paralysis, heart attack, bladder trouble, and breast cancer. (*Harris v. Commissioner*, T.C. Memo. 1969-49.)

The record demonstrates that on February 29, 2012, appellant underwent ankle surgery, was released from the surgery center on the same day and recovered without any complications. Further, during an examination of appellant on June 15, 2012, which is prior to the extended filing deadline, appellant’s physician recommended that appellant begin physical therapy twice a week. Also, unlike the above examples, appellant was not hospitalized or suffering from any life-threatening ailments. Without minimizing the pain and stress appellant certainly suffered, based on these facts, we are not persuaded that appellant was so incapacitated by her condition that she was completely incapable of filing her return until April 15, 2013. Accordingly, we find that appellant has not demonstrated reasonable cause for her late filing.

Finally, appellant’s good filing history, while commendable, is not a basis for penalty abatement. The California Legislature has previously considered and declined to adopt bills that would allow a first-time abatement for taxpayers with a history of filing and payment compliance. (See, e.g., Assem. Bill No. 1777 (2013-2014 Reg. Sess.).)

HOLDING

Appellant has not established that the late-filing penalty for the 2011 tax year should be abated.

DISPOSITION

FTB's action is sustained.

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Nguyen Dang
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Nguyen Dang
Administrative Law Judge

We concur:

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Kenneth Gast
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Kenneth Gast
Administrative Law Judge

DocuSigned by:
Daniel K. Cho
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Daniel K. Cho
Administrative Law Judge