

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:

DENNIS FIGUEROA

OTA Case No. 18011249

Date Issued: February 23, 2018

OPINION

Representing the Parties:

For Appellant:

Tax Appeals Assistance Program (TAAP)¹

For Respondent:

Shree Sharma, Graduate Student Assistant

Desiree Macedo, Graduate Student Assistant

For Office of Tax Appeals:

William J. Stafford, Tax Counsel III

CHENG, Administrative Law Judge: Pursuant to California Revenue and Taxation Code section 19324,² Dennis Figueroa (appellant) appeals an action by the Franchise Tax Board (FTB or respondent) in denying appellant's claim for refund in the amount of \$694.82³ for the 2013 tax year.

Appellant waived his right to an oral hearing; accordingly, the matter is being decided based on the written record.

ISSUES

1. Did appellant establish that his failure to timely file a tax return for the 2013 tax year was due to reasonable cause and not due to willful neglect?
2. Did appellant establish that he is entitled to interest abatement?

¹ Appellant filed his own appeal letter. Ilya Grinevich of TAAP filed appellant's reply brief.

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

³ This amount consists of a late-filing penalty of \$574.50 and interest of \$120.32.

FACTUAL FINDINGS

1. Having received information that appellant received sufficient income to trigger the 2013 California filing requirement,⁴ the FTB issued a notice (Request for Tax Return) dated March 4, 2015, requesting that appellant file a return or explain why no return was required by April 8, 2015. When appellant neither filed a return nor otherwise responded to the FTB's Request for Tax Return, the FTB issued a Notice of Proposed Assessment (NPA) on May 4, 2015, based on the income information it received from various reporting sources. The NPA determined a tax liability of \$2,345.00, a late-filing penalty of \$586.25, and interest of \$93.99.
2. Appellant filed his 2013 California Resident Income Tax Return on August 19, 2015. Appellant's return reported taxable income of \$53,174 and a tax liability of \$2,298, which appellant paid on August 15, 2015. The FTB accepted the return as filed and revised the late-filing penalty to \$574.50. Appellant paid the late-filing penalty and interest in full.
3. In a letter that the FTB received on November 9, 2015, appellant asserted that he was unable to timely file his 2013 California return because his sister had passed away in September of 2013, and because he was a wounded Vietnam veteran with post-traumatic stress disorder (PTSD). The FTB treated appellant's letter as a claim for refund, which it denied on June 27, 2016. In response, appellant filed this timely appeal.

DISCUSSION

Issue 1: Did appellant establish that his failure to timely file a tax return for the 2013 tax year was due to reasonable cause and not due to willful neglect?

California imposes a penalty for failing to file a return by its due date, unless the failure to file was due to reasonable cause and not due to willful neglect. (Rev. & Tax. Code, § 19131.) To establish reasonable cause, a 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

⁴ For 2013 tax year, the FTB received information via Forms W-2 and/or 1099, showing that appellant received: income of \$57,069 from New York Life Insurance and Annuity Corp.; interest income of \$1 from Charles Schwab & Co., Inc.; dividends and/or taxable distributions of \$448 from Charles Schwab & Co., Inc.; dividends and/or taxable distributions of \$50 from Charles Schwab & Co.; and dividends and/or taxable distributions of \$42 from National Financial Services LLC.

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.)⁵ Ignorance of a filing requirement or a misunderstanding of the law generally does not excuse a late filing. (*Appeal of Diebold, Inc.*, 83-SBE-002, Jan. 3, 1983.)

Illness or other personal difficulties may constitute reasonable cause if the illness or personal difficulties continuously prevented the taxpayer from filing a timely return. (See *Appeal of Allen L. and Jacqueline M. Seaman*, 75-SBE-080, Dec. 16, 1975.) However, if the illness or personal difficulties simply caused the taxpayer to sacrifice the timeliness of one aspect of the taxpayer’s affairs to pursue other aspects, the taxpayer must bear the consequences of that choice. (See *Appeal of Michael J. and Diane M. Halaburka*, 85-SBE-025, April 9, 1985; *Appeal of W.L. Bryant*, 83-SBE-180, Aug. 17, 1983; *Appeal of William T. and Joy P. Orr*, 68-SBE-010, Feb. 5, 1968.)

Appellant’s 2013 California return was due on April 15, 2014, although appellant could have timely filed that return by October 15, 2014, pursuant to the automatic six-month extension provision contained in California Code of Regulations, title 18, section 18567. Thus, for appellant to obtain relief from the late-filing penalty, appellant must show reasonable cause for not timely filing his 2013 return by October 15, 2014. While we sympathize with appellant’s situation, appellant has failed to demonstrate that his circumstances prevented him from timely filing his 2013 California return prior to October 15, 2014. As noted above, appellant asserts that he was unable to file a timely 2013 California return because his sister passed away in September of 2013, and that he was a wounded Vietnam veteran with PTSD. While illness or other personal difficulties that prevent a taxpayer from filing a timely return may constitute cause in some cases, appellant bears the burden of providing credible and competent evidence establishing that his preexisting illness or the shock upon learning of his sister’s death, or both, prevented him from timely filing his 2013 return. Here, not only has appellant failed to provide such evidence, we note that appellant’s PTSD did not prevent him from timely filing California returns for 2011 or 2012.

⁵ Published decisions of the Board of Equalization, designated by “SBE” in the citation, may be found on the Board of Equalization’s website at www.boe.ca.gov.

Furthermore, appellant has failed to produce any evidence supporting his argument that his sister's death in September of 2013 prevented him from timely filing his 2013 return. Appellant's 2013 California return was due in April of 2014, and he could have availed himself of an automatic extension and timely filed by October 15, 2014, which was more than a year after his sister's death. However, appellant has not provided any evidence (such as medical records, physician's testimony, etc.) establishing that he was prevented from filing his 2013 return prior to October 15, 2014. In fact, we note that appellant was able to pursue other aspects of his affairs, such as taking care of his sister's estate and moving from San Jose to Roseville, following her passing. (See *Appeal of Michael J. and Diane M. Halaburka, supra*; *Appeal of W.L. Bryant, supra*; *Appeal of William T. and Joy P. Orr, supra*.) In short, appellant has not provided us with evidence necessary for us to find reasonable cause for abatement of the late-filing penalty.

Issue 2: Did appellant establish that he is entitled to interest abatement?

Interest is required to be assessed from the date when payment of tax is due through the date that it is paid. (Rev. & Tax. Code, § 19101.) Imposition of interest is mandatory; it is not a penalty, but is compensation for appellant's use of money after it should have been paid to the state. (*Appeal of Amy M. Yamachi*, 77-SBE-095, June 28, 1977.) There is no reasonable cause exception to the imposition of interest. (*Appeal of Audrey C. Jaegle*, 76-SBE-070, June 22, 1976.)

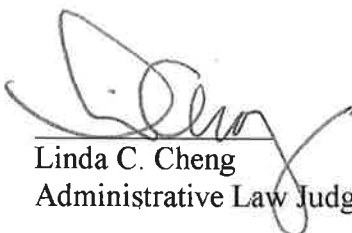
To obtain relief from the imposition of interest, a taxpayer must qualify under the waiver provisions of Sections 21012, 19112, or 19104. The relief of interest under Section 21012 is not relevant here, as the FTB did not provide appellant with any written advice. Section 19112 requires a taxpayer to make a showing of extreme financial hardship caused by a significant disability or other catastrophic circumstance. However, appellant makes no such showing. Moreover, interest has already been paid, therefore, interest cannot be abated under Section 19112. Under Section 19104, subdivisions (a)(1) and (2), the FTB is authorized to abate or refund interest if there has been an unreasonable error or delay in the performance of a ministerial or managerial act by an employee of the FTB. Here, appellant has not alleged any such errors or delays. Thus, appellant has not established any of the statutory grounds for interest abatement.

HOLDINGS

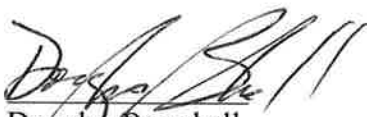
1. Appellant failed to establish that his failure to timely file a personal income tax return for the 2013 tax year was due to reasonable cause and not willful neglect.
2. Appellant failed to establish that he is entitled to interest abatement.

DISPOSITION

Respondent's action in denying appellant's claim for refund is sustained in full.


Linda C. Cheng
Administrative Law Judge

We concur:


Douglas Bramhall
Administrative Law Judge


Andrew J. Kwee
Administrative Law Judge