

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
SHERVIN HOJAT

) OTA Case No. 19014158
)
) Date Issued: August 15, 2019
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)
)

OPINION

Representing the Parties:

For Appellant: Shervin Hojat

For Respondent: Eric R. Brown, Tax Counsel III

J. LAMBERT, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Shervin Hojat (appellant) appeals an action by respondent Franchise Tax Board (FTB) in denying appellant’s claim for refund of \$12,688 for the 2016 tax year.

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

ISSUE

Whether appellant has shown reasonable cause for the late filing of his tax return.

FACTUAL FINDINGS

1. Appellant untimely filed his 2016 tax return on October 31, 2017.
2. Respondent sent appellant a Notice of Tax Return Change – Revised Balance imposing a late filing penalty of \$12,688.
3. After appellant paid the amount due in full, he filed a claim for refund of the penalty. Appellant contended that the delay was due to a “difficult divorce proceeding” which resulted in his wife’s lawyer advising his broker that he could not withdraw from an Individual Retirement Account (IRA) he had reserved to pay any outstanding tax amounts. Appellant contended that he lived in Texas for 25 years, which does not have state tax, so he did not understand the filing extension procedures for California.

4. Appellant provided a letter dated September 14, 2017, from an attorney requesting that a financial management firm immediately freeze all withdrawals from appellant's IRA.
5. Respondent denied appellant's claim for refund and this timely appeal followed.

DISCUSSION

California imposes a penalty for the failure to file a valid return on or before the due date, unless it is shown that the failure was due to reasonable cause and not due to willful neglect. (R&TC, § 19131.) To establish reasonable cause for failing to file a timely return, a taxpayer must show that the failure occurred despite the exercise of ordinary business care and prudence, or that cause existed as would prompt an ordinary intelligent and prudent businessperson to have so acted under similar circumstances. (*Appeal of Tons* (79-SBE-027) 1979 WL 4068.) The burden is on the taxpayer to prove that the difficulties experienced prevented the taxpayer from filing a timely return. (*Appeal of Duff* (2001-SBE-007) 2001 WL 1674987.) Ignorance of the law does not excuse a taxpayer's failure to comply with statutory requirements. (*Appeal of Diebold, Inc.* (83-SBE-002) 1983 WL 15389.) Delays due to difficulties in accumulating documents or other necessary information generally will not constitute reasonable cause for the late filing of a tax return. (*Appeal of Orr* (68-SBE-010) 1968 WL 1640.)


Appellant argues that he did not have the funds to pay tax. However, FTB imposed a late filing penalty and not a late payment penalty. As such, appellant's claims, with regard to his inability to pay his tax, do not show why he was unable to timely file his tax return by April 15, 2017. The burden is on appellant to prove that his difficulties prevented him from filing a timely return. (*Appeal of Duff, supra.*) Appellant does not provide any evidence of difficulties he faced in filing his return, or that he was unable to file his return despite the exercise of ordinary business care and prudence. As appellant provides no evidence other than the September 14, 2017 letter freezing his IRA account, there is no basis for us to find reasonable cause for the late filing of his tax return.

HOLDING

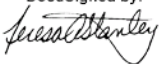
Appellant has shown not reasonable cause for the late filing of his tax return.

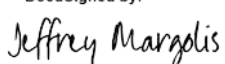
DISPOSITION

FTB's action is sustained.

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Josh Lambert
Administrative Law Judge

We concur:

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Teresa A. Stanley
Administrative Law Judge

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Jeffrey I. Margolis
Administrative Law Judge