

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
R. MERZ

) OTA Case No. 19024362
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OPINION

Representing the Parties:

For Appellant: Johnathon Vo, Tax Appeals Assistance Program

For Respondent: Diane M. Deatherage, Program Specialist III

J. LAMBERT, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, R. Merz (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$10,858.50 for the 2015 tax year.

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

ISSUE

Whether to abate the late-filing penalty.

FACTUAL FINDINGS

1. FTB received information that appellant earned California source income in 2015, including gross proceeds of \$500,000 from selling California property.
2. FTB issued a Request for Tax Return on April 18, 2017, requiring that appellant file a return, provide a copy of the return if already filed, or explain why she was not required to file a return.
3. When appellant did not respond, FTB issued a Notice of Proposed Assessment on June 26, 2017, which estimated her taxable income to be \$504,321.00, and proposed an

assessment of additional tax of \$48,674.00, a late-filing penalty of \$12,168.50, and interest.

4. Appellant filed a return on June 12, 2017, which FTB accepted.¹ The return reported total taxable income of \$738,151, withholdings of \$33,300 in relation to the sale, and total tax of \$76,734. FTB modified the late-filing penalty to \$10,858.50.
5. Appellant paid the amount due and filed a claim for refund, which FTB denied. This timely appeal followed.

DISCUSSION

California law imposes a penalty for the failure to timely file a return, unless it is shown that the late filing is due to reasonable cause. (R&TC, § 19131(a).) For a taxpayer to establish that a failure to timely file was due to reasonable cause, the taxpayer must show that the failure occurred despite the exercise of ordinary business care and prudence. (*Appeal of Sleight* (83-SBE-244) 1983 WL 15615.)

Appellant argues that she filed late because she is 88 years old and forgetful. Appellant also states that she initially intended to include the sale on the return but ultimately decided not to after the tax amount appeared too high, in her opinion. Appellant states that after being contacted by the tax authorities about the unreported income, she contacted a CPA and filed an amended return. Appellant has not shown reasonable cause because she was aware of the sale of property and that she owed tax on the sale, but willfully did not report the sale on her return. She was aware that the sale should be reported as taxable, as she withheld \$33,300 in relation to the sale. Appellant has not provided evidence of steps she took to exercise ordinary business care and prudence, such as seeking the help of a CPA before the due date. While appellant eventually received the help of a CPA, it was not until after the return was due. Ignorance of the law does not excuse noncompliance with statutory requirements. (*Appeal of Diebold, Inc.* (83-SBE-002) 1983 WL 15389.) A taxpayer that fails to acquaint herself with the requirements of California tax law has not exercised ordinary business care and prudence. (*Ibid.*) Therefore, appellant has not shown reasonable cause.


¹ The NPA was issued after appellant filed her return, apparently due to the time taken to process her return. The late-filing penalty in the NPA was revised in accordance with the return that appellant filed.

HOLDING

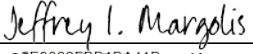
The late-filing penalty is not abated.

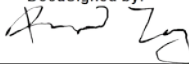
DISPOSITION

FTB’s action is sustained.

DocuSigned by:

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Josh Lambert
Administrative Law Judge

We concur:

DocuSigned by:

8FE982FBB1B741B...
Jeffrey I. Margolis
Administrative Law Judge

DocuSigned by:

F8E81582726F448...
Richard I. Tay
Administrative Law Judge

Date Issued: 2/18/2020