

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of:  
**E. MAGAO**

) OTA Case No. 19064884  
)  
)  
)  
)  
)

**OPINION**

Representing the Parties:

For Appellant: E. Magao

For Respondent: Colin Rowe, Graduate Legal Assistant

N. DANG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, E. Magao (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying her claim for refund for the 2016 tax year.

Appellant waived her right to an oral hearing, and therefore, we decide the matter based on the written record.

**ISSUE**

Whether appellant has established reasonable cause warranting abatement of the late-filing penalty.

**FACTUAL FINDINGS**

1. Appellant late-filed her 2016 California Resident Income Tax Return on June 11, 2018.
2. Consequently, FTB imposed an \$8,153.75 late-filing penalty plus applicable interest for the 2016 tax year.

## DISCUSSION

The late-filing penalty shall not apply if a taxpayer establishes that the failure to file a return within the prescribed deadline was due to reasonable cause and not willful neglect.<sup>1</sup> (R&TC, § 19131(a).) Reasonable cause means that the failure to timely file occurred despite the exercise of ordinary business care and prudence. (*U.S. v. Boyle* (1985) 469 U.S. 241, 246.)<sup>2</sup> A taxpayer bears the burden of establishing reasonable cause warranting abatement of the late-filing penalty. (*Appeal of Beadling* (77-SBE-021) 1977 WL 3831.)

Appellant contends that she suffers from dementia which caused the late filing of her Return. Appellant alleges that due to this condition, she was unable to recall that she had received taxable income from a matured annuity in 2016, which required her to file a return for that year. To support her position, appellant provided a letter dated May 29, 2019, in which her physician states that appellant “has been under the care of this medical practice for years. She has been seen on a regular basis throughout this time. Medical records indicate she is suffering from dementia. As such, she lacks capacity to make independent legal, medical and financial decisions.”

Where taxpayers allege that they are unable to timely file based on illness, there are two fundamental criteria that must be established to demonstrate reasonable cause. First, the taxpayer must show by credible and competent proof that the illness continuously prevented the timely filing of a return. (*Appeal of Halaburka* (85-SBE-025) 1985 WL 15809.) This is a high standard to meet. It means that appellant must demonstrate that as a result of her condition, it was more than just inconvenient or even burdensome for her to timely file, but that her condition was so severe as to render her utterly incapable of exercising ordinary business care and prudence. For example, reasonable cause was 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. Comm’r*, T.C. Memo. 1969-49.)

---

<sup>1</sup> There is no evidence or assertion that appellant’s late filing was due to willful neglect, and therefore, we do not discuss this further.

<sup>2</sup> Because the relevant language of R&TC section 19131 pertaining to the reasonable cause exception is patterned after Internal Revenue Code section 6651, federal courts’ interpretation of the “reasonable cause” standard is persuasive authority in determining the proper application of this California statute. (See *Andrews v. Franchise Tax Bd.* (1969) 275 Cal.App.2d 653, 658.)

Further, taxpayers must establish that the duration of the incapacity approximates that of the failure to file. (*Wright v. Comm’r*, T.C. Memo. 1998-224.) As applied here, this requires appellant to show that she was incapacitated at some point prior to the 2016 tax year filing deadline, and that upon becoming aware of her 2016 tax year filing requirement, she thereafter filed her return within a reasonable period of time.

The letter provided by appellant’s physician lacks sufficient information to establish that either of the above criteria have been met. There is no statement indicating the severity of appellant’s memory loss and how, specifically, this may have impacted her ability to timely file, nor does this letter provide any insight into appellant’s mental condition prior to the time her 2016 return was due.<sup>3</sup> Without this information, we are unable to determine whether appellant had reasonable cause for her late filing.

Based on the foregoing, we conclude that appellant has not established that her late filing was due to reasonable cause.

---

<sup>3</sup> We sent an additional briefing request to appellant dated January 15, 2020, indicating that her physician’s letter lacked sufficient information and allowing appellant an opportunity to provide medical records clarifying whether she suffered from dementia prior to April 15, 2017 (the due date of the return), and the extent of her memory loss at that time. However, appellant did not respond to our request.

HOLDING

Appellant has not established reasonable cause warranting abatement of the late-filing penalty.

DISPOSITION

FTB’s action is sustained.

DocuSigned by:  
*Nguyen Dang*  
4D465873FB44469...  
\_\_\_\_\_  
Nguyen Dang  
Administrative Law Judge

We concur:

DocuSigned by:  
*Linda C. Cheng*  
8E585BFAC08946D  
\_\_\_\_\_  
Linda C. Cheng  
Administrative Law Judge

DocuSigned by:  
*Suzanne B. Brown*  
47F45ABE89E34D0  
\_\_\_\_\_  
Suzanne B. Brown  
Administrative Law Judge

Date Issued: 4/14/2020