

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

In the Matter of the Appeal of: ) OTA Case No. 19105424  
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**R. BASKARAN AND** )  
**M. SUBRAMANYAM** )  
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**OPINION**

Representing the Parties:

For Appellants: R. Baskaran and M. Subramanyam<sup>1</sup>  
 For Respondent: Kenneth A. Davis, Tax Counsel IV  
 David Hunter, Tax Counsel IV<sup>2</sup>

A. ROSAS, Administrative Law Judge: Under Revenue and Taxation Code (R&TC) section 19324, appellants R. Baskaran and M. Subramanyam appeal respondent Franchise Tax Board's action denying appellants' claim for refund of \$6,057.25 for tax year 2017. Appellants waived their right to an oral hearing, and therefore we decide this matter based on the written record.

**ISSUE**

Whether appellants' failure to timely file their tax return for tax year 2017 was due to reasonable cause.

**FACTUAL FINDINGS**

1. At the start of 2017, Mr. Baskaran worked in California. After he accepted new employment during the summer, appellants moved to Farmington, Connecticut, where they rented an apartment. In September, appellants sold their California home, and soon afterwards, they purchased a home in Weatogue, Connecticut.

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<sup>1</sup> Appellants filed their first and third briefs. During the interim, they were represented by the Tax Appeals Assistance Program, and law student Denise E. Stich filed appellants' second brief.

<sup>2</sup> Mr. Davis filed respondent's first brief, and Mr. Hunter filed respondent's second brief.

2. Mr. Baskaran received two Forms W-2 for tax year 2017: one from his California employer, the other from his Connecticut employer. Both Forms W-2 contained appellants' Weatogue, Connecticut address.
3. In February 2018, appellants travelled to India. Mr. Baskaran returned to the U.S. in March 2018, but Mrs. Subramanyam stayed in India because she was ill.<sup>3</sup> She returned to the U.S. in May 2018. Two months later, in July 2018, through their tax professional, appellants filed an amended 2016 California income tax return.
4. After returning to the U.S. in May 2018, Mrs. Subramanyam continued to experience health illness, although she did not seek any medical treatment in the U.S. Before the end of October 2018, she contacted their tax preparer to request that they start preparing appellants' 2017 federal and state tax returns. In November 2018, she returned to India for a surgical procedure scheduled for December 2018.
5. In 2018, Mr. Baskaran experienced his own health issues, dating back to 2013. Mr. Baskaran never received a confirmed diagnosis, and he continued working despite these health issues. Also, Mr. Baskaran sold shares of stock in December 2018.
6. In January 2019, Mrs. Subramanyam returned to Connecticut. Appellants untimely filed their 2017 California Nonresident or Part-Year Resident Income Tax Return on May 10, 2019. The return reported a balance due, which appellants remitted with the return.
7. A week later, respondent issued a Notice of Tax Return Change - Revised Balance Due: respondent had imposed two penalties plus applicable interest and fees, including a \$6,057.25 late-filing penalty, which is the penalty relevant to this appeal.
8. The following month, appellants submitted a claim for refund, seeking a refund of the late-filing penalty due to reasonable cause. Respondent denied appellants' claim for refund, and this timely appeal followed.

### DISCUSSION

Because appellants failed to timely file their 2017 California tax return by April 15, 2018, or by the automatic six-month extension, respondent imposed a late-filing penalty of \$6,057.25. Respondent imposes this penalty when a taxpayer does not timely file a return, unless it is shown

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<sup>3</sup> Out of concern for appellants' privacy and because their specific medical histories are not relevant to our analysis and conclusion, we will not discuss appellants' specific health issues.

that the failure to timely file was due to reasonable cause and not due to willful neglect. (R&TC, § 19131(a).) When respondent imposes this penalty, the law presumes that it is correct. (*Appeal of Xie*, 2018-OTA-076P (*Xie*)). A taxpayer has the burden of establishing reasonable cause. (*Appeal of Scott* (82-SBE-249) 1982 WL 11906.) Appellants do not dispute the late-filing penalty computation, and there are no allegations of willful neglect in this appeal. Thus, our sole focus here is on reasonable cause. As a general matter, for a taxpayer to establish that a failure to act was due to reasonable cause, the taxpayer must show that the failure occurred despite the exercise of ordinary business care and prudence, or that cause existed as would prompt an ordinarily intelligent and prudent businessperson to have so acted under similar circumstances. (*Xie, supra*; *Appeal of Head and Feliciano*, 2020-OTA-127P (*Head & Feliciano*)).

The applicable standard of proof is by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(c).) That is, a party must establish by documentation or other evidence that the circumstances it asserts are more likely than not to be correct. (*Concrete Pipe and Products of California, Inc. v. Construction Laborers Pension Trust for Southern California* (1993) 508 U.S. 602, 622 (*Concrete Pipe*)). In other words, the preponderance of the evidence standard means more than 50 percent. (*Union Pacific Railroad Co. v. State Bd. of Equalization* (1991) 231 Cal.App.3d 983, 1000 (*Union Pacific*)). Taxpayers must provide credible and competent evidence to support the claim of reasonable cause; otherwise the penalties will not be abated. (*Appeal of Walshe* (75-SBE-073) 1975 WL 3557 (*Walshe*)).

To show reasonable cause, appellants offer four main arguments. First, because they moved three times in 2017, “some correspondence was sent to the wrong address.” Second, because they sold California real estate and then purchased Connecticut real estate, their 2017 tax return<sup>4</sup> was “more complicated,” which in turn “required some back and forth” with their tax professionals. Third, Mrs. Subramanyam’s health made it “impossible for [her] to be cognizant of any of [their] personal business matters.” Lastly, the combination of Mr. Baskaran’s “intense work pressure,” prior health issues, and the “unexpected decline in his wife’s health,” impacted his own health and his “ability to function normally at work and at home.” We turn to a discussion of each of these four main points, and we highlight only the most salient details.

As to appellants’ first argument, at the start of 2017, appellants lived in California. During the summer, appellants moved to Farmington, Connecticut, where they rented an

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<sup>4</sup> For discussion purposes, we focus solely on appellants’ California tax return, unless otherwise noted.

apartment. In September, appellants sold their California home, and soon afterwards, they purchased a home in Weatogue, Connecticut. The evidence shows that the two Forms W-2 for tax year 2017 included appellants' Weatogue, Connecticut address—which appellants assert is their new correct address. Nevertheless, appellants argue that “some correspondence was sent to the wrong address,” which required appellants “to have them resent to the new address” in Weatogue, Connecticut. As evidence of this argument, appellants provided bank statements from 2017 reflecting the three separate addresses.<sup>5</sup> Appellants would have us conclude that these three bank statements—showing appellants' three different addresses over a four-month period—somehow indicate that their 2017 tax documents were sent to the wrong address. We decline to accept such an inference. Even if it is true that tax documents were sent to the wrong address, taxpayers have an obligation to file returns timely, with the best information available, and, if necessary, taxpayers may subsequently file an amended return. (*Xie, supra.*)

The bank statements cut against their argument. These bank statements show that appellants promptly updated their addresses each time they moved. For example, after they moved to Farmington, Connecticut, and rented an apartment, they quickly updated their address with their bank. After they bought a home in Weatogue, Connecticut, again they quickly updated their address. In any event, there is no evidence in the record that any tax document was sent to the wrong address, that appellants contacted relevant third-parties about not receiving tax documents, or that appellants requested copies of tax documents be resent to the new address.

As to appellants' second argument, appellants argue that their 2017 tax return was “more complicated.” Appellants did not present any evidence from their tax professionals—no correspondence, no emails, no other evidence—indicating that these tax professionals were of the opinion that this was a complicated return, or indicating the degree to which the preparation of this return required, in appellants' words, “some back and forth” communication. In addition, based on the evidence, we note that appellants first contacted the tax professionals about the 2017 tax return in October 2018. They filed these returns seven months later, in May 2019. Based on the seven-month, back-and-forth period, these facts raise the question of whether the tax professionals would have filed appellants' 2017 tax return timely if appellants had contacted them sooner, in the early part of 2018, rather than waiting until October 2018.

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<sup>5</sup> Bank statement ending August 9 shows their California address; bank statement ending September 6 shows their Farmington, Connecticut address; and bank statement ending November 6 shows their Weatogue, Connecticut address.

Appellants also argue that when they contacted their tax professionals about amending their 2016 tax returns, the tax professionals did not encourage them to do anything about the overdue 2017 tax return. Again, there is no evidence about what these tax professionals encouraged appellants to do—or not to do. Even if the tax professionals did not encourage appellants to do anything about the 2017 tax return, this does not prove reasonable cause.<sup>6</sup>

As to appellants' third argument, appellants argue that Mrs. Subramanyam's health issues made it "impossible for [her] to be cognizant of any of [appellants'] personal business matters." Illness or other personal difficulties may be considered reasonable cause, if the taxpayers present credible and competent proof that they were continuously prevented from filing a tax return. (*Head & Feliciano, supra; Appeal of Halaburka* (85-SBE-025) 1985 WL 15809 (*Halaburka*)). When taxpayers allege reasonable cause based on an incapacity due to illness or the illness of an immediate family member, the duration of the incapacity must approximate that of the tax obligation deadline. (*Head & Feliciano, supra; see Wright v. Commissioner*, T.C. Memo. 1998-224, citing *Hayes v. Commissioner*, T.C. Memo. 1967-80.) However, if the difficulties simply caused the taxpayers to sacrifice the timeliness of one aspect of their affairs to pursue other aspects, the taxpayers must bear the consequences of that choice. (*Head & Feliciano, supra; Appeal of Orr* (68-SBE-010) 1968 WL 1640.)

In February 2018, appellants travelled to India. Mr. Baskaran returned to the U.S. the following month, but Mrs. Subramanyam remained until May 2018 because she was ill. Appellants argue that if Mrs. Subramanyam had not fallen ill while in India, she "would have been able to return to Connecticut in time to make arrangements with the tax accounting firm." We do give some weight to the fact that Mrs. Subramanyam became ill in India; appellants' evidence supports this argument.

Based on the preponderance of the evidence, however, appellants have not demonstrated that Mrs. Subramanyam's illness prevented her from filing appellants' 2017 tax return. Mrs. Subramanyam returned to the U.S. in May 2018 but, as indicated above, did not contact the tax professionals about the tax return until October 2018. Also, while there is evidence that Mrs. Subramanyam was ill when in India in 2018, the evidence does not support appellants' statements that she remained ill after returning to the U.S. Appellants argue that Mrs.

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<sup>6</sup> Taxpayers have a non-delegable duty to file their tax returns by the due date specified in an unambiguous statute. (*United States v. Boyle* (1985) 469 U.S. 241, 251-252 [holding that taxpayers can rely on accountants or attorneys for substantive advice, but not for a filing deadline].)

Subramanyam “had difficulty concentrating and coping with everyday activities” and that it was impossible for her “to be cognizant of any of [appellants’] personal business matters” during this mental state. Yet, there is no evidence that she sought medical treatment in the U.S. regarding these health issues.

Appellants list the medications that Mrs. Subramanyam was prescribed while in India. Appellants provide general information about some of the medications’ potential side effects. But appellants did not present any medical evidence showing that this medication actually caused Mrs. Subramanyam any of these side effects. Even if appellants proved, by a preponderance of the evidence, that Mrs. Subramanyam’s illness or other personal difficulties in 2018 continuously prevented her from filing appellants’ 2017 tax return, this would not end our legal analysis. No reasonable cause exists to abate a penalty if an ill taxpayer had a spouse who was well and who could have tended to the couple’s tax obligations. (*Halaburka, supra.*)

Thus, we now turn to appellants’ final argument. In 2018, Mr. Baskaran experienced his own health issues, dating back to 2013. While appellants state that Mr. Baskaran’s prior health issues caused him some discomfort in 2018, they also admit that he never received a confirmed diagnosis. Appellants failed to provide evidence to show that Mr. Baskaran was not capable of filing a timely return due to these purported health claims. Yet, despite this lack of evidence, appellants argue that Mr. Baskaran was dealing with a lot of “work pressure” in 2018. They argue that Mrs. Subramanyam’s unexpected decline to her health, combined with Mr. Baskaran’s intense work pressure, impacted his own health and ability to function normally at work and at home. This may very well be true, but appellants did not prove this by a preponderance of the evidence.

The evidence shows that Mr. Baskaran returned to the U.S. in March 2018, where he remained throughout the rest of the year. He continued to work throughout 2018 despite these purported health issues. The facts from December 2018 are also telling. This is the month when Mrs. Subramanyam underwent surgery in India. Although the unexpected decline to her health and Mr. Baskaran’s intense work pressure adversely impacted his ability to function normally at work and at home, he made time to sell stocks in December 2018—the same month that his wife underwent surgery. A taxpayer’s selective inability to perform tax obligations, while participating in regular business activities, does not establish reasonable cause. (*Head & Feliciano, supra; Watts v. Commissioner, T.C. Memo. 1999-416.*)

As discussed above, a party must establish that the circumstances it asserts are more likely than not to be correct. (*Concrete Pipe, supra.*) This preponderance of the evidence standard means more than 50 percent. (*Union Pacific, supra.*) Taxpayers must provide credible and competent evidence to support the claim of reasonable cause; otherwise the penalties will not be abated. (*Walshe, supra.*) It may very well be true that appellants' health issues and the resulting effects happened exactly as appellants allege. But what may have happened and what taxpayers can prove (by a preponderance of the evidence) are not necessarily the same. Appellants' uncorroborated argument about what may have happened is insufficient to satisfy their burden of proof. Therefore, we find that they did not establish that the late filing was due to reasonable cause.

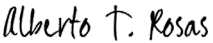
Lastly, although appellants reference their good compliance history, unlike the federal First Time Penalty Abatement program, the State of California has not adopted a comparable penalty abatement program. (*Xie, supra.*)

#### HOLDING

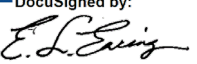
Appellants have not shown that the failure to timely file their tax return for tax year 2017 was due to reasonable cause.

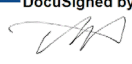
#### DISPOSITION

We sustain respondent's denial of appellants' claim for refund.

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Alberto T. Rosas  
Administrative Law Judge

We concur:

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Elliott Scott Ewing  
Administrative Law Judge

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Andrew Wong  
Administrative Law Judge

Date Issued: 1/12/2021