

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

In the Matter of the Appeal of:  
**J. TREMBACK**

) OTA Case No. 20076379  
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**OPINION**

Representing the Parties:

For Appellant: J. Tremback

For Respondent: Eric R. Brown, Tax Counsel III

A. ROSAS, Administrative Law Judge: Under Revenue and Taxation Code (R&TC) section 19324, appellant J. Tremback appeals respondent Franchise Tax Board’s action in denying appellant’s claim for refund regarding a late-payment penalty of \$1,871.27 for tax year 2018. Appellant waived the right to an oral hearing, and therefore we decide this matter based on the written record.

**ISSUE**

Whether appellant’s failure to timely pay the tax liability for tax year 2018 was due to reasonable cause.

**FACTUAL FINDINGS**

1. Appellant’s aunt passed away in Germany on March 7, 2019. In 2002, when he was a child, appellant was his aunt’s legal ward. On March 14, 2019, appellant boarded a flight from California to Germany. The funeral service was held on March 18, 2019.
2. In May 2019, appellant timely filed a 2018 California Resident Income Tax Return. Appellant reported total tax of \$35,691, total payments of \$1,668, and a self-assessed underpayment of estimated tax penalty of \$856. This resulted in a balance due of \$34,879, which appellant paid on May 9, 2019.

3. Respondent imposed a late-payment penalty of \$1,871.27, charged interest of \$112.67, and reduced the underpayment of estimated tax penalty to \$131. In June 2019, respondent transferred \$1,073.96 between appellant's accounts, from tax year 2017 to tax year 2018, which resulted in a balance due of \$183.15 for tax year 2018. Appellant paid the balance on November 1, 2019.
4. At the end of March 2020, appellant submitted a claim for refund regarding the late-payment penalty of \$1,871.27. On April 22, 2020, respondent denied appellant's claim for refund. Appellant then filed this timely appeal.

### DISCUSSION

Because appellant failed to timely pay his tax liability for tax year 2018 by April 15, 2019, respondent imposed a late-payment penalty of \$1,871.27. Appellant indicated that he does “not concede any amount at issue.” The penalty is presumed correct unless the taxpayer can demonstrate that the late payment resulted from reasonable cause and not willful neglect. (R&TC, § 19132(a)(1); *Appeal of Triple Crown Baseball LLC*, 2019-OTA-25P (*Triple Crown*)).) The late-payment penalty is computed as five percent of the total tax unpaid plus one-half of one percent for every month the payment of tax was late. (R&TC, § 19132(a)(2).) Appellant reported total tax of \$35,691 and total payments of \$1,668, for total tax unpaid of \$34,023. Five percent of the total tax unpaid equal \$1,701.15. One-half of one percent for the one month the payment of tax was late equals \$170.12. Thus, respondent correctly imposed a late-payment penalty of \$1,871.27 (\$1,701.15 + \$170.12).

There are no allegations of willful neglect in this appeal; our sole focus here is on reasonable cause. To establish reasonable cause, the taxpayer must demonstrate that its failure to timely pay the proper amount of the tax occurred despite the exercise of ordinary business care and prudence. (*Triple Crown, supra.*) The reason for missing the deadline must be such that an ordinarily intelligent and prudent businessperson would have acted similarly under the same circumstances. (*Appeal of Moren*, 2019-OTA-176P (*Moren*)).

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.) This standard “ ‘means what it says, viz., that the evidence on one

side outweighs, preponderates over, is more than, the evidence on the other side, not necessarily in number of witnesses or quantity, but in its effect on those to whom it is addressed.’ ” (*Glage v. Hawes Firearms Co.* (1990) 226 Cal.App.3d 314, 325 (italics omitted), quoting *People v. Miller* (1916) 171 Cal. 649, 652.)

Appellant’s position is that his aunt’s death establishes reasonable cause for his late payment. She passed away on March 7, 2019, and appellant travelled to Germany to attend the funeral service held on March 18, 2019. Appellant explained that he had lived with his aunt in 2002. But there are many things that remain unexplained. For example, appellant does not explain the link between these events in March 2019 to his failure to pay taxes by April 15, 2019.

If personal difficulties cause 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. (*Triple Crown, supra.*) Illness of the taxpayer or immediate family members may be considered reasonable cause if the taxpayer presents credible and competent proof that he or she was continuously prevented from filing a tax return or paying the tax because of that illness. (*Triple Crown, supra; Appeal of Halaburka* (85-SBE-025) 1985 WL 15809.<sup>1</sup>) We understand that appellant may have considered his aunt to be immediate family; the evidence shows that in 2002, when he was a child, appellant was his aunt’s legal ward. Yet, appellant does not present any credible or competent proof that he was continuously prevented from paying the tax because of his aunt’s untimely passing.

We do not know when appellant returned to California. We do not know what happened between March 18, 2019, and April 14, 2019. We do not know whether the aunt’s passing caused personal difficulties in other aspects of appellant’s life—such as his employment, to name one example. Thus, there is no evidence before us to properly analyze the issue of whether the passing of appellant’s aunt established reasonable cause for the late payment. According to statements made by appellant in his appeal, the passing of appellant’s aunt does not appear to be connected to his attempt to timely pay by April 15, 2019.

Rather, appellant states that he attempted to file electronically and pay his taxes on April 14, 2019, but before authorizing the online tax preparation program to submit the e-filed return, he “wanted to see the Form 540 with the information populated.” Appellant alleges that

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<sup>1</sup> Although *Appeal of Halaburka* concerns filing deadlines, the same reasoning applies to payment deadlines. (*Moren, supra*, at fn. 12.)

issues with the online tax preparation program establish reasonable cause. Appellant stated that the online program did not grant him access to this tax form. He explained that he was eventually able to review the tax return and confirm it was acceptable to file, and that he attempted to file electronically on April 24, 2019, but was unable to do so.

“The most important factor in determining reasonable cause and good faith is the extent of the taxpayer’s effort to assess his or her proper tax liability.” (*Frias v. Commissioner* (2017) T.C. Memo. 2017-139.) Here, there is no evidence that the tax liability shown on the online tax preparation program on April 14, 2019, was not the proper tax liability. Appellant stated that “\$35,000 is a huge amount of money for me so I didn’t want to base my tax payment on the estimate shown on their website,” which suggests that he knew of his proper tax liability as of April 14, 2019. We understand appellant’s assertion regarding the obstacles he may have faced in attempting to file and pay electronically by April 15, 2019. We understand his assertion that a prior year return may have impacted his ability to file and pay electronically. However, appellant presents no evidence to show, or tend to show, that the online tax preparation program is to blame.

Moreover, there is nothing in the record that indicates appellant was required to pay electronically. Even if errors with the online tax preparation program prevented appellant from paying his tax electronically on April 14, 2019, there is no evidence to explain why he could not have printed out his tax return and submitted a paper return or, at the very least, submitted the payment postmarked by April 15, 2019. Although appellant argues that he was “not sure there were other methods to pay the tax due,” ignorance of the law is no excuse for a failure to file a tax return or pay taxes. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.) Therefore, we find that appellant did not establish that the late payment was due to reasonable cause.

HOLDING

Appellant did not show that the failure to timely pay the tax liability for tax year 2018 was due to reasonable cause.

DISPOSITION

We sustain respondent’s denial of the claim for refund.

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Alberto T. Rosas  
Administrative Law Judge

We concur:

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Keith T. Long  
Administrative Law Judge

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Kenneth Gast  
Administrative Law Judge

Date Issued: 2/25/2021