

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

In the Matter of the Appeal of: ) OTA Case No. 20066275  
S. HODGES )  
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**OPINION**

Representing the Parties:

For Appellant: S. Hodges

For Respondent: Eric R. Brown, Tax Counsel III

R. TAY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, S. Hodges (appellant) appeals an action by Franchise Tax Board (respondent) denying appellant’s claim for refund of \$10,479.50.

Appellant waived his right to an oral hearing; therefore, we decide this matter based on the written record.

**ISSUE**

Whether appellant has shown that his failure to file a timely California income tax return for the 2017 tax year was due to reasonable cause.

**FACTUAL FINDINGS**

1. In October 2018, appellant flew overseas to attend to his mother who was in poor health. Appellant’s mother passed away shortly after he arrived. In November 2018, appellant helped make funeral arrangements and attended the funeral, which was also overseas.
2. Appellant filed his 2017 California income tax return late on July 29, 2019. On his return, appellant self-assessed interest and penalties in the amount of \$6,411 in total.
3. Respondent revised appellant’s interest, fees and penalties and issued a Notice of Tax Return Change – Revised Balance, which also included respondent’s assessment of the late-filing penalty in the amount of \$10,479.50. The notice advised appellant that he had

a balance due of tax, penalties, interest and fees. Appellant paid the balance due with two payments made on December 19, 2019 and December 31, 2019.

4. Appellant filed a Reasonable Cause – Individual and Fiduciary Claim for Refund (claim for refund) on March 1, 2020, and requested “leniency for a portion of the penalties assessed.”<sup>1</sup> Although appellant requested only a partial refund of the late-filing penalty, respondent treated appellant’s claim for refund as request for a refund of the entire amount of late-filing penalty.
5. Respondent denied appellant’s claim for refund in a letter dated March 23, 2020. This timely appeal follows.

### DISCUSSION

When respondent imposes a penalty, the law presumes that the penalty was imposed correctly. (*Appeal of Xie*, 2018-OTA-076P.) The burden of proof is on the taxpayer to show that reasonable cause existed to support an abatement of the penalty. (*Ibid.*) To overcome the presumption of correctness attached to the penalty, appellant must provide credible and competent evidence supporting a claim of reasonable cause; otherwise, the penalty cannot be abated. (*Ibid.*)

R&TC section 19131 imposes a late-filing penalty on a taxpayer who fails to file a return by either the due date or the extended due date unless it is shown that the failure was due to reasonable cause and not willful neglect. To establish reasonable cause, the taxpayers must show that the failure to file timely returns occurred despite the exercise of ordinary business care and prudence, or that such cause existed as would prompt an ordinarily intelligent and prudent businessperson to have so acted under similar circumstances. (*Appeal of Head and Feliciano*, 2020-OTA-127P.)

Appellant argues reasonable cause existed because at the time he planned to file his California income tax return (on extension), it was a difficult time personally and professionally for him as he was coping with his mother’s passing. We acknowledge that it was a difficult time for appellant; however, his circumstances do not excuse the late filing of his California income

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<sup>1</sup> On appeal, appellant requests abatement of just a portion of the late-filing penalty instead of the whole amount. Appellant argues that he should be responsible for a portion of the penalty based on the circumstances. However, there is no provision under the law that allows us to apportion culpability for appellant’s late filing, and proportionately abate the late-filing penalty accordingly.

tax return. 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. (*Appeal of Head and Feliciano, supra.*) When difficulties simply cause a taxpayer to sacrifice the timeliness of one aspect of his affairs to pursue other aspects, the taxpayer must bear the consequences of that choice. (*Ibid.*)

Here, appellant admits that he was “extremely distracted” at the time he was supposed to file, and that his “family circumstances took up most of [his] attention.” Appellant has not shown he was continuously prevented from filing a timely California income tax return; rather, the facts show that he chose to focus on other affairs rather than timely file his return.

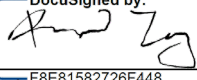
Appellant also argues that a discrepancy existed with his tax documents (specifically the Schedule K-1 he received from a joint venture entity), which prevented him from timely filing his return. However, appellant does not provide information and evidence about the purported discrepancy. Moreover, taxpayers have an obligation to file timely returns with the best available information, and to then subsequently file an amended return, if necessary. (*Mileham v. Commissioner*, T.C. Memo. 2017-168.) Contrary to appellant’s decision to file a late return after he resolved the purported discrepancy, the law dictates that the appropriate path is to file a timely return and amend it later, if needed. (*Appeal of Xie, supra.*)

HOLDING

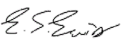
Appellant has not shown that his failure to file a timely California income tax return for the 2017 tax year was due to reasonable cause.


DISPOSITION

Respondent’s action is sustained.

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Richard Tay  
Administrative Law Judge

We concur:

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Elliott Scott Ewing  
Administrative Law Judge

DocuSigned by:  
  
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Sheriene Anne Ridenour  
Administrative Law Judge

Date Issued: 5/3/2021