

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
D. MAZO

) OTA Case No. 21047593
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OPINION

Representing the Parties:

For Appellant:

D. Mazo

For Respondent:

Bradley J. Coutinho, Tax Counsel III

R. TAY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, D. Mazo (appellant)¹ appeals an action by Franchise Tax Board (respondent) denying appellant’s claim for refund of \$780 for the 2019 tax year.

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

ISSUE

Whether appellant has shown reasonable cause existed to excuse the late filing of his 2019 California income tax return.

FACTUAL FINDINGS

1. Appellant filed his 2019 California income tax return on November 6, 2020. Appellant filed with his spouse (married filing jointly) and claimed two dependents on the return.
2. Appellant’s 2019 income tax return was due July 15, 2020.²

¹ Mr. Mazo filed a joint 2019 California income tax return with his spouse. However, Mr. Mazo filed a claim for refund in his name only and signed the appeal letter without his spouse. Thus, Mr. Mazo is the sole appellant in this appeal.

² Due to the COVID-19 pandemic, respondent postponed the filing and payment deadlines for the 2019 California income tax return to July 15, 2020.

3. Respondent imposed the late-filing penalty because appellant filed his 2019 income tax return after the original due date.³
4. Appellant paid the penalty amount due and filed a claim for refund.
5. Respondent denied the claim for refund in a letter dated February 3, 2021.

DISCUSSION

R&TC section 19131 provides that a late-filing penalty shall be imposed when a taxpayer fails to file a tax return on or before its due date, unless the taxpayer establishes that the late filing was due to reasonable cause and not due to willful neglect. When respondent imposes a late-filing penalty, the law presumes that the penalty was imposed correctly. (*Appeal of Xie*, 2018-OTA-076P.) To establish reasonable cause, a taxpayer must show that the failure to file a return on time occurred despite the exercise of ordinary business care. (*Appeal of GEF Operating Inc.*, 2020-OTA-057P.)

Appellant argues that he should not be liable for the late-filing penalty because of the IRS's delays in sending appellant his dependents' Individual Taxpayer Identification Numbers (ITINs). Additionally, appellant argues, "I was directed to [wait to] file my tax return until I had received ITIN's for my dependents." On appeal, appellant provided notices from the IRS, which contained the ITINs appellant requested, and which are dated October 12, 2020, and December 15, 2020.

Appellant appears to argue that reasonable cause existed to excuse the late filing of his 2019 California income tax return based on his belief that he could not file until he received the ITINs. However, we are not persuaded by appellant's arguments. Reasonable cause does not include a taxpayer's difficulty in obtaining necessary information (*Appeal of Moren*, 2019-OTA-176P), and therefore the absence of appellant's dependents' ITINs does not constitute reasonable cause for his late filing. We acknowledge that the COVID-19 pandemic gave rise to unprecedented challenges; however, we note that appellant could have timely filed his return even without his dependents' ITINs, and subsequently amended the return. Thus, any delay to appellant's receipt of his dependents' ITINs does not excuse his late filing.

Regarding appellant's argument that he "was directed" to file late, and relied on such direction, we are also not persuaded to find reasonable cause existed. Reliance on the advice of a

³ Appellant also did not file within the automatic due date for the 2019 tax year that applied to taxpayers who filed after July 15, 2020, and no later than October 15, 2020.

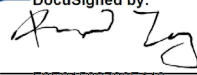
tax professional may constitute reasonable cause; however, appellant has not provided documentary evidence to show the nature or the source of such advice for us to assess his purported reliance. Since any such evidence would be in the control of appellant, and appellant has not provided such evidence, we assume that the evidence is not favorable to appellant’s position. (*Appeal of Morosky*, 2019-OTA-312P.) Thus, we are not persuaded that appellant received legal advice from a tax professional to excuse the late filing of his 2019 California income tax return.

HOLDING

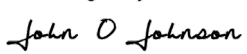
Appellant has not shown reasonable cause existed to excuse the late filing of his 2019 California income tax return.

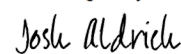
DISPOSITION

We sustain respondent’s action in full.

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Richard Tay
Administrative Law Judge

We concur:

DocuSigned by:

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John O. Johnson
Administrative Law Judge

DocuSigned by:

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Josh Aldrich
Administrative Law Judge

Date Issued: 1/12/2022