

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

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

) OTA Case No. 21078266  
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**OPINION**

Representing the Parties:

For Appellant: Tax Appeals Assistance Program (TAAP)<sup>1</sup>

For Respondent: Eric R. Brown, Tax Counsel III

For Office of Tax Appeals: Oliver Pfof, Tax Counsel

S. RIDENOUR, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, E. Fakhoury (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$1,705.25 for the 2019 tax year.<sup>2</sup>

This matter was heard pursuant to the provisions of the Small Case Program in effect when the appeal was filed.<sup>3</sup> The Opinion rendered in this matter cannot be treated as precedent for any other appeal before the Office of Tax Appeals. Appellant waived the right to an oral hearing and the matter is being decided based on the written record.

**ISSUES**

1. Whether appellant has established reasonable cause for failing to timely file his 2019 tax return.

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<sup>1</sup> Sunny Zhu and Mengjun He of TAAP represented appellant at the Small Case Program Meeting held with the parties on December 12, 2021.

<sup>2</sup> Appellant originally requested a refund of \$1,852.17. During the Small Case Program Meeting, appellant clarified that he was requesting a refund of \$1,705.25, which is the aggregated amount of the late-filing penalty (\$1,577.25) and the underpayment of estimated tax penalty (\$128.00). Therefore, the amount at issue on appeal is \$1,705.25.

<sup>3</sup> The provisions of the Small Case Program are found at California Code of Regulations, title 18, section 30209.1, effective March 1, 2021.

2. Whether appellant has established a basis warranting abatement of the underpayment of estimated tax penalty (estimated tax penalty).

#### FACTUAL FINDINGS

1. Appellant untimely filed a 2019 California Resident Income Tax Return on February 20, 2021. Appellant reported total tax due of \$6,309 and self-assessed an estimated tax penalty of \$221, which respondent later reduced to \$128. Appellant did not remit payment with the return. Since the return was untimely filed, respondent imposed a late-filing penalty of \$1,577.25.
2. Respondent issued appellant a revised balance due notice and an income tax due notice notifying appellant of the late-filing penalty, the reduced estimated tax penalty, and the outstanding tax due, plus applicable interest. In May 2021, appellant paid the amount due in full.
3. Appellant filed a claim for refund, requesting a refund of the late-payment and estimated tax penalties based on reasonable cause, which respondent denied. This timely appeal followed.

#### DISCUSSION

##### Issue 1: Whether appellant has established reasonable cause for failing to timely file his 2019 tax return.

R&TC section 19131 imposes a late-filing penalty on a taxpayer who does not file a timely tax return unless the taxpayer establishes that the untimely filing is due to reasonable cause and not due to willful neglect. (R&TC, § 19131(a).) The late-filing penalty is calculated at 5 percent of the tax due with the return for each month, or fraction of each month the return is late, with a maximum penalty of 25 percent of the tax due with the return. (*Ibid.*)

Calendar-year individual taxpayers who are required to file a return, such as appellant, must file their return on or before April 15 following the close of the calendar year. (R&TC, § 18566.) California law provides individual taxpayers an automatic six-month extension from the original statutory due date of April 15 to file a tax return, but this extension is only allowed if a return is filed within the extension period. (R&TC, § 18567; Cal. Code Regs., tit. 18, § 18567.) In response to the COVID-19 pandemic, and pursuant to Internal Revenue Code (IRC) section 7508A, California postponed the individual 2019 tax return filing deadline to

July 15, 2020.<sup>4</sup> Since a postponement granted pursuant to IRC section 7508A does not change the original statutory due date of the tax return, the COVID-19 filing postponement does not modify the automatic six-month extension provided by R&TC section 18567, which remains in reference to the original statutory due date of April 15, 2020, for the 2019 tax year. Unlike the automatic six-month extension, however, the COVID-19 postponement is allowed whether or not the individual taxpayer files by the postponement due date, here July 15, 2020. Therefore, the R&TC section 19131 late-filing penalty is calculated by reference to the postponement date of July 15, 2020, and not in reference to the original statutory due date of April 15, 2020.

Appellant acknowledges he filed an untimely return on February 20, 2021. Respondent imposed a \$1,577.25 late-filing penalty, which is the maximum of 25 percent. The amount of the penalty is correct as appellant filed the return more than five months late from the postponement due date of July 15, 2020, and 25 percent of the tax due with the return, \$6,309, is \$1,577.25. Therefore, the only remaining issue is whether appellant has established reasonable cause for the late filing of his return.

When respondent determines a taxpayer has not shown reasonable cause warranting abatement of the late-filing penalty, that determination is presumed correct, and the taxpayer bears the burden of proving it erroneous. (*Appeal of Mauritzson*, 2021-OTA-198P.) The taxpayer must provide credible and competent evidence supporting a claim of reasonable cause, otherwise respondent's determination must be upheld. (*Ibid.*)

To establish reasonable cause, a taxpayer must show they failed to file a timely return despite the taxpayer exercising ordinary business care and prudence, or such a cause existed as would prompt an ordinarily prudent businessperson to have acted as the taxpayer acted under similar circumstances. (*Appeal of Head and Feliciano*, 2020-OTA-127P.) Illness or other personal difficulties may be reasonable cause if the illness or personal difficulty continuously prevented the taxpayer from filing a return. (*Ibid.*) However, if the difficulties simply caused the taxpayer to sacrifice the timeliness of one aspect of his or her affairs to pursue other aspects,

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<sup>4</sup> See <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2020-3-state-postpones-tax-deadlines-until-july-15-due-to-the-covid-19-pandemic.html>.

Given a federally declared disaster, or a state of emergency declared by the Governor, respondent may specify a period of time, up to one year, that may be disregarded in determining whether certain tax-related acts, such as the filing of a tax return, were performed within the time prescribed by statute. (R&TC, § 18572; IRC, §§ 7508A, 7508(a)(1)(A).)

the taxpayer must bear the consequences of that choice. (*Appeal of Head & Feliciano, supra*; *Appeal of Belcher, 2021-OTA-284P.*) When a taxpayer alleges reasonable cause based on 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. (*Ibid.*) Since appellant failed to file a return by the postponement due date of July 15, 2020, we are principally concerned with the period from July 15, 2020, through October 15, 2020 (the six-month automatic extension date from the original statutory due date of April 15, 2020).

Appellant maintains several deaths and severe illnesses in his family prevented him from filing a return until he did so on February 20, 2021. Appellant contends his father was hospitalized with COVID-19-related illnesses from July 17, 2020, to August 8, 2020.<sup>5</sup> Appellant contends an aunt and uncle were also hospitalized within a day of his father, and the aunt passed away on August 24, 2020, from COVID-19-related complications. Appellant also contends his grandfather was hospitalized in May 2020, and he too passed away in late July 2020 from COVID-19-related complications. Appellant further contends another uncle passed away from a stroke on July 4, 2020. Appellant asserts that he was occupied with planning and securing funding for several funerals as well as caring for his father after he was discharged from the hospital. In sum, appellant argues that these personal difficulties and illnesses prevented him from filing a return until February 20, 2021, and, therefore, he has reasonable cause for failing to timely file his 2019 return.

Appellant submitted photographs showing his father hospitalized with COVID-19, hospital discharge instructions, and documents concerning funeral arrangements for members of his family. The funeral arrangement documents indicate funerals for separate members of appellant's family were held on July 9, 2020, July 25, 2020, August 2, 2020, and September 25, 2020.

The evidence shows appellant experienced exceptional personal difficulties in July and early August 2020, including three funerals for members of his family in a span of 25 days, plus the 23-day hospitalization of his father with COVID-19. The law is clear, however, that a taxpayer must have been *continuously prevented* by illness or personal difficulty from filing a return. (*Appeal of Head and Feliciano, supra.*) Appellant did not file his 2019 return until

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<sup>5</sup> While appellant did not provide records substantiating the dates of his father's hospitalization, respondent agreed at the Small Case Program Meeting to accept July 17, 2020, to August 8, 2020, as the period appellant's father was hospitalized.

February 20, 2021. Appellant has not submitted evidence indicating what illness or personal difficulties *continuously prevented* him from filing a return from July 15, 2020, to October 15, 2020. Consequently, appellant has not submitted evidence sufficient to show he was continuously unable to file a timely return. Appellant has therefore not established reasonable cause for failing to timely file his 2019 tax return, and respondent's determination must be upheld.

Issue 2: Whether appellant has established a basis warranting abatement of the estimated tax penalty.

IRC section 6654 imposes an addition to tax, which is treated and often referred to as a penalty, when an individual fails to pay timely estimated tax.<sup>6</sup> For California purposes, estimated tax payments are generally due four times a year, with the first installment due on April 15 of the current year (30 percent of the required annual payment), the second installment due on June 15 of the current year (40 percent of the required annual payment), the third installment having no payment due, and the fourth installment due on January 15 of the following year (30 percent of the required annual payment). (R&TC, § 19136.1.) The estimated tax penalty is similar to an interest charge and applies from the due date of the estimated tax payment until the date it is paid. (*Appeal of Saltzman*, 2019-OTA-070P.)

There is no provision in the R&TC or IRC allowing the estimated tax penalty to be abated based solely on a finding of reasonable cause. (*Appeal of Saltzman, supra.*) As a result, there is no general reasonable cause exception to the imposition of the estimated tax penalty, and the penalty is mandatory unless the taxpayer establishes a statutory exception applies. (*Ibid.*) One such exception, found at IRC section 6654(e)(3)(A), provides the taxing agency may waive the estimated tax penalty if it determines “by reason of casualty, disaster, or other unusual circumstances the imposition of [the estimated tax penalty] would be against equity and good conscience.”

Appellant self-assessed an estimated tax penalty of \$221 for the 2019 tax year, which respondent later reduced to \$128. Appellant seeks abatement of the estimated tax penalty for the same reason he seeks abatement of the late-filing penalty, namely the prolonged hospitalization of his father and the personal difficulties he experienced from the passing of several members of

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<sup>6</sup> Subject to several exceptions not relevant to this appeal, California incorporates IRC section 6654 at R&TC 19136, meaning those relevant provisions of IRC section 6654 are California law.

his family. There is, however, no general reasonable cause exception to the estimated tax penalty, and therefore the penalty may not be abated on that basis. Even so, three of appellant's four estimated tax payments were due in 2019, and one due by January 15, 2020. These tax payments were therefore due before appellant's personal difficulties occurred between May 2020 and September 2020. Appellant has not submitted any evidence showing what casualty, disaster, or other unusual circumstances prevented him from making the three estimated tax payments due in 2019, and the last due by January 15, 2020. Appellant has therefore not established a basis warranting abatement of the estimated tax penalty.

#### HOLDINGS

1. Appellant has not established reasonable cause for failing to timely file his 2019 tax return.
2. Appellant has not established a basis warranting abatement of the estimated tax penalty.

#### DISPOSITION

Respondent's action is sustained.

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*Sheriene Anne Ridenour*  
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Sheriene Anne Ridenour  
Administrative Law Judge

Date Issued: 12/29/2021