

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 19125538
)
B. WU AND)
T. TRAN)
)

OPINION

Representing the Parties:

For Appellants:	Michael Lim, TAAP ¹ Mengjun He, Supervisor, TAAP
For Respondent:	Ellen L. Swain, Tax Counsel IV

N. RALSTON, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, B. Wu and T. Tran (appellants) appeal an action by the Franchise Tax Board (respondent) denying appellants' claim for refund of \$1,720.50 for the 2017 tax year.

Office of Tax Appeals Administrative Law Judges Sara A. Hosey, Amanda Vassigh, and Natasha Ralston held an oral hearing for this matter via Webex. At the conclusion of the hearing, the record was closed, and this matter was submitted for an opinion.

ISSUE

Whether appellants have established reasonable cause to abate the late-filing penalty.

FACTUAL FINDINGS

1. On April 15, 2018, appellants made an estimate of their tax due for the 2017 tax year and made a payment of \$2,000.

¹ TAAP stands for Taxpayers Appeals Assistance Program (TAAP). Michael Lim of TAAP represented appellants at the hearing. Arish Bill of TAAP represented appellants at the time this Opinion was issued. David González of TAAP filed appellants' additional reply brief, Aletheia Preston of TAAP filed appellants' supplemental brief, Julia Siewit of TAAP filed appellants' reply brief, and appellants filed their own opening brief.

2. In late September or early October 2018, appellant-Wu's mother was diagnosed with cancer and subsequently passed away on January 28, 2019.
3. Appellants planned and held two memorials for appellant-Wu's mother in February 2019.
4. Appellant Wu attended a total of 17 grief counseling sessions from March 19, 2019, through August 30, 2019, and January 15, 2020, through February 25, 2020.
5. Respondent issued a Request for Tax Return dated April 23, 2019. Appellants subsequently filed their joint 2017 return, which respondent received on May 6, 2019.² The return reported tax due of \$6,882, plus penalties and interest, which appellants paid with the return on May 6, 2019.³
6. Respondent assessed a late-filing penalty of \$1,720.50, plus applicable interest. Appellants paid the outstanding balance and timely filed a claim for refund, which respondent denied.
7. This timely appeal followed.

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 exists to support an abatement of the penalty. (*Ibid.*) To overcome the presumption of correctness attached to the penalty, appellants must provide credible and competent evidence supporting a claim of reasonable cause; otherwise, the penalty cannot be abated. (*Ibid.*)

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. The late-filing penalty is calculated at 5 percent of the tax for each month or fraction thereof that the return is late, with a maximum penalty of

² In their opening brief, appellants stated that they mailed their return in mid-March [of 2019]; respondent disputes this assertion. Both parties agree that respondent received appellants' 2017 return on May 6, 2019.

³ Appellants also self-assessed and paid an underpayment of estimated tax penalty of \$40 which is not at issue in this appeal.

25 percent of the tax. Here appellants' 2017 return was due on April 15, 2018, but appellants untimely filed their 2017 return on or about May 6, 2019.

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. (*Appeal of Belcher*, 2021-OTA-284P.) Illness or other personal difficulties may be considered reasonable cause if taxpayers present credible and competent proof that they were continuously prevented from filing a tax return. (*Appeal of Head and Feliciano*, 2020-OTA-127P.) When taxpayers allege reasonable cause based on an incapacity due to illness, the duration of the incapacity must approximate that of the tax obligation deadline. (*Appeal of Head & Feliciano, supra*; see also *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. (*Appeal of Head & Feliciano, supra*.) Furthermore, when a joint return is filed by a married couple, each spouse has an obligation to ensure the timely filing of their joint return. (*Appeal of Head and Feliciano, supra*; *Appeal of Halaburka*, 85-SBE-025 1985 WL 15809).

Appellants do not dispute that the penalty was properly imposed or computed, but rather, appellants contend that they had reasonable cause to abate the late-filing penalty due to the death of appellant-Wu's mother. Appellants contend that they were unable to timely pay the tax due because appellant-Wu was caring for his mother since her emergency hospitalization on October 2, 2018. Appellants assert that appellant-Wu visited his mother in the hospital almost every day and cared for her in her home when she was released from the hospital. Appellants state that after his mother's passing, appellant-Wu planned and held two memorial services for his mother in February 2019 and subsequently, attended 17 grief counseling sessions from March 19, 2019, through August 30, 2019, and January 15, 2020, through February 25, 2020.

As noted above, the law presumes that the penalty was properly imposed, and the burden is on appellants to show that reasonable cause exists to abate the penalty. (*Appeal of Xie, supra*). In addition, appellants must show that reasonable cause existed until the return was filed. (*Appeal of Head and Feliciano, supra*.) Furthermore, as both spouses have an independent

obligation to timely file the return and pay any tax liability associated with that return, reasonable cause must exist for both parties. (*Appeal of Head and Feliciano, supra; Appeal of Halaburka, supra*). Here, the parties have provided evidence showing that appellant-Wu cared for his mother during her illness and have provided evidence showing the effect that her illness and passing had upon him.

However, appellants have failed to provide evidence regarding appellant-Tran and whether she was able to timely file the return and pay the liability. Respondent provided evidence showing that appellant-Tran worked outside of the home and earned wage income during the fourth quarter of 2018 and during 2019. At the hearing, appellants stated that appellant-Wu usually filed the return and that appellant-Tran had work obligations that had to be completed. There is no evidence that shows that appellant-Tran was unable to timely file the return and pay the liability. In other words, appellants sacrificed the timeliness of one aspect of their affairs to pursue other aspects, and therefore must bear the consequences of that choice. (*Appeal of Head & Feliciano, supra.*) Thus, appellants have failed to show that reasonable cause exists to abate the late-filing penalty.

HOLDING

Appellants failed to establish that reasonable cause exists to abate the late-filing penalty.

DISPOSITION

Respondent’s action denying appellants’ claim for refund is sustained.

DocuSigned by:

Natasha Ralston

Natasha Ralston

Administrative Law Judge

We concur:

DocuSigned by:

Sara A. Hosey

Sara A. Hosey

Administrative Law Judge

DocuSigned by:

Amanda Vassigh

Amanda Vassigh

Administrative Law Judge

Date Issued: 2/23/2022