

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 21098715
THE ESTATE OF JAMES LEGLER)
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OPINION

Representing the Parties:

For Appellant: Casey Hinds, Executor

For Respondent: Nathan H. Hall, Tax Counsel III

E. LAM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, the Estate of James Legler (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$8,385 for the 2019 tax year.

Appellant waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

ISSUE

Whether appellant has established reasonable cause to abate late filing penalty for the 2019 tax year?

FACTUAL FINDINGS

1. On November 19, 2020, appellant filed Form 541, California Fiduciary Income Tax Return, for the 2019 tax year, reporting a balance due. Appellant paid the reported balance due on November 30, 2020.
2. On December 11, 2020, FTB issued a State Income Tax Balance Due Notice (Notice) imposing a late filing penalty in the amount of \$8,385 and applicable interest.¹
3. Appellant responded to the Notice with a letter dated December 20, 2020, and requested that the late filing penalty be abated because appellant had difficulty gathering relevant

¹ The return was due on July 15, 2020, for the 2019 tax year.

documents and information needed to file the return due to disputes between the beneficiaries. Appellant also asserted that COVID-19 related disruptions affected the appellant's ability to meet with professionals to adequately report and file the California tax return.

4. Appellant paid the late payment penalty on March 15, 2021.
5. Appellant requested abatement of the late filing penalty based on reasonable cause, which FTB treated as a claim for refund.
6. On July 21, 2021, FTB issued a letter denying appellant's refund claim requesting abatement of the late filing penalty.
7. This timely appeal followed.

DISCUSSION

R&TC section 19131 imposes a late filing penalty where a taxpayer fails to file a return when due, unless the failure is due to reasonable cause and not willful neglect. The penalty is calculated at five percent of the tax liability for each month the return is past due, up to a maximum of 25 percent. (R&TC, § 19131.) When FTB imposes a penalty, the law presumes that FTB properly imposed the penalty. (*Appeal of Xie*, 2018-OTA-076P.)

A taxpayer must provide credible and competent evidence supporting a claim of reasonable cause to overcome this presumption of correctness. (*Appeal of Xie, supra.*) To establish reasonable cause, a taxpayer must show that the failure to file timely returns occurred despite the exercise of ordinary business care and prudence, or that cause existed as would prompt an ordinarily intelligent and prudent businessman to have so acted under similar circumstances. (*Appeal of Auburn Old Town Gallery, LLC*, 2019-OTA-319P.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.)

Here, appellant acknowledges that the 2019 tax year return was not filed timely, but contends that reasonable cause existed, and consequently, the late filing penalty should be abated. Appellant's initial assertions in their claim for refund were twofold: (1) it was difficult to gather relevant information needed to file the return due to disputes between the beneficiaries; and (2) COVID-19 related disruptions affected the ability to meet with professionals and to adequately report and file the required tax returns. While these statements constitute reasons for delay, appellant has not provided any evidence showing how either of these asserted causes of

delay impacted its ability to timely file its return. Furthermore, nothing in the record suggests that appellant's failure to timely file the 2019 tax return occurred despite exercising ordinary business care and prudence. Appellant does not describe what efforts, if any, were taken to timely file the return. As such, these unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof for reasonable cause. We find appellant's initial assertions fail to establish reasonable cause to abate the late filing penalty.

On appeal, appellant's argument is also twofold: (1) there were delays in filing the tax return on time due to a family emergency; and (2) the IRS abated the late filing penalty and asks FTB to do the same. In response to the first assertion, we are sympathetic to appellant's difficult personal circumstances. The death or serious illness of a taxpayer or a member of a taxpayer's immediate family may constitute reasonable cause for a failure to file a tax return when due. (*United States v. Boyle* (1985) 469 U.S. 241, 243, fn 1.) However, the death or illness must involve a combination of severity and timing that would have made it "virtually impossible" to comply and prevented the taxpayer's compliance with the filing requirement. (See *Estate of Stuller v. United States* (7th Cir. 2016) 811 F.3d 890 [holding that a taxpayer who had suffered through many tragic events in the 15 months before her return was due had not established reasonable cause because the events were not sufficiently severe and continuous to make it "virtually impossible" to comply with the filing requirements].) Here, appellant's assertion of a family emergency does not show that it was so severe that made it "virtually impossible" to comply with the filing requirements. (*Ibid.*) In fact, appellant has not provided any evidence establishing that the family emergency was a death or illness that involve a combination of severity and timing that would have made it "virtually impossible" to have prevented timely filing of the tax return. Therefore, appellant's unsupported assertions are not enough to satisfy the burden of proof. (*Appeal of GEF Operating, Inc., supra.*)

In response to appellant's second assertion, FTB has no program that allows abatement of the late filing penalty for first-time offenders with a good filing and payment history, and California law allows abatement of the late filing penalty only on a showing of reasonable cause.² We find appellant's assertions on appeal do not establish reasonable cause existed to abate the late penalty.

² The California Legislature has considered and declined to adopt bills that would change California law to allow a first-time abatement for taxpayers with a history of filing and payment compliance. (See Assem. Bill No. 1777 (2013-2014 Reg. Sess.))

HOLDING

Appellant failed to establish reasonable cause to abate late filing penalty for the 2019 tax year.

DISPOSITION

FTB’s action is sustained.

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Eddy Y.H. Lam

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Eddy Y.H. Lam

Administrative Law Judge

We concur:

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Richard Tay

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Richard Tay

Administrative Law Judge

DocuSigned by:

John O Johnson

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John O. Johnson

Administrative Law Judge

Date Issued: 3/23/2022