

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

In the Matter of the Appeal of: ) OTA Case No. 21047589  
L. YEE AND )  
S. KUANG )  
\_\_\_\_\_ )

**OPINION**

Representing the Parties:

For Appellants: Andrea Lavelle, Tax Appeals Assistance Program<sup>1</sup>

For Respondent: Alisa Pinarbasi, Tax Counsel

E. S. EWING, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, L. Yee, and S. Kuang (appellant-wife) (collectively, appellants) appeal an action by the Franchise Tax Board (respondent) denying appellants’ claim for refund of \$1,027.86<sup>2</sup> for the 2019 tax year.

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

**ISSUE**

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

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<sup>1</sup> Appellants filed the appeal in this matter. Jared Garfield, student at the University of San Diego School of Law participating in the Tax Appeals Assistance Program, filed appellants’ reply brief.

<sup>2</sup> The amount at issue consists of a \$908.50 late filing penalty, plus interest. Appellants do not provide separate arguments regarding the interest portion of this amount beyond their reasonable cause arguments. Since there is no reasonable cause exception to the imposition of interest (*Appeal of Gorin*, 2020-OTA-018P), and the record does not suggest any other grounds for interest abatement here, only the late filing penalty is addressed herein.

### FACTUAL FINDINGS

1. On December 2, 2020, appellants filed their California joint income tax return for the 2019 tax year late.
2. On December 28, 2020, respondent sent a Notice of Tax Return Change – Revised Balance (Notice). The Notice included a late filing penalty, plus interest, and showed a balance due of \$1,027.86.
3. Appellants made a payment of \$1,027.86 to satisfy the amount due in the Notice. Appellants then filed a claim for refund in the same amount, requesting abatement of the late filing penalty and interest based on reasonable cause.
4. Respondent denied appellants' claim for refund.
5. Appellants filed this timely appeal.

### DISCUSSION

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. When respondent imposes a penalty, the law presumes that the penalty was imposed correctly. (*Appeal of Xie*, 2018-OTA-076P.) 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.) With a joint return, the evidence must show that both taxpayers were prevented from filing the return by the due date. (*Ibid.*)

Appellants argue reasonable cause exists because at the time they planned to file their California income tax return (on extension), it was a difficult time personally and professionally for them, including coping with emotional difficulties as a result of the COVID-19 pandemic. They also assert in their claim for refund that they were confused about the date their tax return was due – i.e., they were under the impression that their tax return was due on extension on January 15, 2021, when in fact it was due on October 15, 2020, which is six months from the statutory original due date of April 15, 2020. Appellants explain that they mistakenly believed the six-month extension was from July 15, 2020 (the COVID-19 original due date as postponed

by respondent), not from the statutory original due date of April 15, 2020. Appellants state in their claim for refund that they “didn’t mean to file the tax late, it was just because [they] misunderstood the deadline.”

Appellants also provide a declaration executed by them which asserts, among other things, that “because we’ve been through emotional difficulties, it was hard for us to keep track of everything, that was the reason we missed the tax filing deadline by a couple of weeks.” The declaration further states that appellants lost their jobs during the pandemic. Appellants provide records from the California Employment Development Department showing payment of unemployment benefits to both appellants. Appellants assert that due to these circumstances, they were suffering from “mental health issues and other personal difficulties.”

When applied to situations involving illness or other personal difficulty, the standard of reasonable cause requires taxpayers to present competent and credible proof that they were continuously prevented from filing a timely return. (*Appeal of Belcher*, 2021-OTA-284P.) When difficulties simply cause taxpayers to sacrifice the timeliness of one aspect of their affairs to pursue other aspects, they must bear the consequences of that choice. (*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. (*Appeal of Xie, supra.*)

We understand that appellants were going through difficult times leading up to when they ultimately filed their return, but beyond general statements about the nature of their difficulties, they have not shown specifically how they were prevented from filing between the postponed original due date of July 15, 2020, and when they finally filed in December 2020. (See *Appeal of Belcher, supra.*) Further, it appears appellants made a mistake as to when the filing extension expired while focusing on other matters. As noted above, sacrificing the timeliness of filing a return to pursue other matters does not constitute reasonable cause. (*Ibid.*) We also note that evidence which includes the dates of each of appellants’ unemployment shows that appellant-wife was still employed through the COVID-19 tax return filing due date of July 15, 2020. As previously mentioned, with a joint return, the evidence must show that both taxpayers were prevented from filing the return by the due date. (*Appeal of Head and Feliciano, supra.*) The fact that appellant-wife was still working during the period leading up to the COVID-19 tax return filing due date of July 15, 2020, indicates that she was capable of filing the tax return.

In conclusion, we understand that the period in question was a very difficult one for appellants. However, appellants have not provided us with evidence constituting credible and competent proof to show that both appellants were continuously prevented from filing a timely California income tax return. (See *Appeal of Belcher, supra.*) Thus, appellants have not met their burden of proof to support a finding of reasonable cause.

HOLDING

Appellants have not shown reasonable cause to abate the late filing penalty.

DISPOSITION

Respondent’s action is sustained.

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Elliott Scott Ewing  
Administrative Law Judge

We concur:

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Tommy Leung  
Administrative Law Judge

DocuSigned by:  
  
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John O. Johnson  
Administrative Law Judge

Date Issued: 4/20/2022