

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
G. SHERMAN

) OTA Case No. 21037421
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OPINION

Representing the Parties:

For Appellant: Chad Dickinson, Esq.

For Respondent: Christopher Cook, Tax Counsel

H. LE, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, G. Sherman (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$2,103.20 for the 2016 tax year, \$2,479.20 for the 2017 tax year, \$4,482.75 for the 2018 tax year, and \$1,010.30 for the 2019 tax year.¹

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

ISSUES²

1. Whether the late-payment penalties should be abated due to reasonable cause for the 2016, 2017 and 2019 tax years.

¹ The amounts listed here are only for the late-payment and late-filing penalties. Appellant concedes the estimated tax penalties for the 2016 through 2019 tax years. Thus, the amounts for the estimated tax penalties are not included here, and we will not address this issue further. In addition, the amounts listed here do not match respondent’s claim for refund denial letters because respondent informed us that the denial letters contain typos. Instead, the amounts listed match the late-payment and late-filing penalties as per respondent’s system records. Also, we note that if the penalties are abated, any corresponding interest would also be refunded.

² Respondent initially argued that the Office of Tax Appeals (OTA) does not have jurisdiction to consider appellant’s refund claim for 2016 because the claim has not been perfected. However, in response to a request for additional briefing from OTA, respondent now agrees that OTA has jurisdiction to decide appellant’s appeal for the 2016 tax year because credit from the 2019 tax year has been subsequently applied to the 2016 tax year. Accordingly, we will not address this issue further.

2. Whether the late-filing penalty should be abated due to reasonable cause for the 2018 tax year.

FACTUAL FINDINGS

Background, Injuries, and Illnesses

1. Appellant was injured in multiple accidents prior to the years at issue. In one accident, he suffered a traumatic brain injury resulting in a present neurocognitive disorder, and another accident contributed to appellant's present complex regional pain syndrome, hypertension, diabetes, and other medical disorders. Appellant also has been diagnosed with major depressive disorder, is in constant pain, and suffers from a range of medical conditions, including a heart condition. The combination of appellant's multiple medical conditions has a present synergistic effect. In addition, appellant is disabled under the Americans with Disabilities Act and the Rehabilitation Act of 1973.
2. According to his doctor, appellant has significant deficits in executive functioning (organizing, planning, and problem solving), fluid reasoning, visual processing, memory, and concentration. Appellant seems unfocused and has difficulties solving problems quickly and efficiently. Further, appellant has difficulties performing activities of daily living. Appellant's impairments cause him immense difficulties in the interpersonal, academic, and vocational areas. Appellant also has struggled with managing his affairs and has immense difficulties with managing his money. Consequently, appellant's doctor has constantly advised him to consult a financial planner and obtain an accountant's services. Appellant's doctor believes appellant "does not know how to manage his money, budget properly, file and pay his taxes timely."
3. Appellant has been under his current doctor's care since 2009. Appellant receives consistent treatment and sees his doctor at least once a week. Since appellant's 2013 comprehensive neuropsychological evaluation, which showed numerous significant neurocognitive deficits, appellant's condition has not improved. Furthermore, appellant underwent a comprehensive medical-legal evaluation in 2021, which confirmed his numerous medical conditions.

Tax Compliance and Procedure

4. Appellant timely filed California income tax returns for the 2016, 2017, and 2019 tax years. Appellant reported a tax liability but did not pay the reported tax due by the due date.
5. Appellant filed late his 2018 tax year California income tax return.³
6. Respondent imposed the late-payment penalties for the 2016, 2017 and 2019 tax years and imposed the late-filing penalty for the 2018 tax year.
7. After making his final payment for the tax years at issue in October 2020, appellant filed a claim for refund for penalty abatement due to reasonable cause. Respondent denied the claim.
8. This timely appeal followed.

DISCUSSIONIssue 1: Whether the late-payment penalties should be abated due to reasonable cause for the 2016, 2017 and 2019 tax years.

R&TC section 19001 provides that the personal income tax “shall be paid at the time and place fixed for filing the return (determined without regard to any extension of time for filing the return).” R&TC section 19132 provides that a late-payment penalty shall be imposed when a taxpayer fails to pay the amount shown as due on the return on or before the due date of the return. The late-payment penalty may be abated if a taxpayer shows that the failure to make a timely payment of tax was due to reasonable cause and not due to willful neglect. (R&TC, § 19132(a).) In this appeal, there are no allegations of willful neglect, and appellant does not dispute that he paid his taxes late for the 2016, 2017 and 2019 tax years and does not dispute the late-payment penalty computation. Thus, our focus is on reasonable cause.

A taxpayer has the burden of establishing reasonable cause. (*Appeal of Belcher*, 2021-OTA-284P.) The applicable standard of proof is by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(c).) To meet this evidentiary standard, a party must establish by documentation or other evidence that the circumstances it asserts are more likely than not to be

³ Appellant’s tax returns for the 2016-2019 tax years were prepared by tax preparers. Due to his cognitive deficiencies, appellant contends that he entrusted a tax professional, but the tax professional did not handle his tax compliance appropriately.

correct. (*Appeal of Belcher, supra.*) In other words, the preponderance of the evidence standard means more than 50 percent. (*Ibid.*)

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 Triple Crown Baseball LLC, 2019-OTA-025P.*) Illness may establish reasonable cause where the taxpayer presents credible and competent proof that the circumstances of the illness prevented the taxpayer from complying with the law. (*Ibid.*) Mental illness or mental incapacity can also constitute reasonable cause. (*Appeal of Belcher, supra.*) But the taxpayer must show that the “mental or emotional disorder . . . rendered the taxpayer incapable of exercising ordinary business care and prudence during the period in which the failure to file continued.” (*Ibid.*) If the taxpayer can exercise ordinary care and prudence with respect to nontax matters, the claimed mental illness or mental incapacity does not constitute reasonable cause. (*Ibid.*) In short, here appellant must prove by the preponderance of the evidence the following: (1) he had an illness; (2) the circumstances of his illness prevented him from exercising ordinary care and prudence to pay his taxes on time; and (3) his illness had persisted continuously during the period in which the failure to pay taxes continued.

Appellant submitted two credible and competent pieces of evidence to support his claim that he suffers from multiple illnesses. The first piece of evidence is a letter from Dr. Corrado, a Qualified Medical Evaluator in the field of Clinical Psychology & Neuropsychology. Dr. Corrado states that appellant was injured in multiple accidents, including one in which he suffered a traumatic brain injury resulting in a neurocognitive disorder and another which contributed to appellant’s complex regional pain syndrome, hypertension, diabetes, and other medical disorders. Dr. Corrado further states appellant has been diagnosed with major depressive disorder and is in constant pain. Dr. Corrado notes that the combination of appellant’s multiple medical conditions have a “synergistic effect.” Dr. Corrado also notes that appellant is disabled under the Americans with Disabilities Act and the Rehabilitation Act of 1973.

The second evidence is a comprehensive medical-legal evaluation performed by Dr. Reynolds. To create this evaluation, Dr. Reynolds reviewed 751 pages of records and

personally spent one and a half hours interviewing and examining appellant. In short, Dr. Reynolds substantiated appellant's lengthy history of surgery and illnesses and generated a list of medical conditions from which appellant suffers, ranging from a heart condition to diabetes. Accordingly, based on the finding of two separate doctors, we find appellant has proven that he suffers from multiple illnesses, including a neurocognitive disorder.

Turning to whether the circumstances of appellant's illnesses rendered him incapable of exercising ordinary care and prudence and which prevented him from paying taxes on time, we find credible Dr. Corrado's statements on how appellant's illnesses affect him. Dr. Corrado states appellant shows significant deficits in executive functioning (organizing, planning, and problem solving), fluid reasoning, visual processing, memory, and concentration. Dr. Corrado also states that appellant will seem unfocused, and it will be difficult for him to solve problems quickly and efficiently. Moreover, Dr. Corrado found that appellant has difficulties performing activities of daily living. Dr. Corrado further notes that appellant's impairments cause him immense difficulties in the interpersonal, academic, and vocational arenas. Dr. Corrado states appellant has struggled with managing his affairs and has immense difficulties with managing his money. Indeed, Dr. Corrado has constantly advised appellant to consult a financial planner and to obtain the services of an accountant. In Dr. Corrado's opinion, appellant "does not know how to manage his money, budget properly, file and pay his taxes timely." Accordingly, we find the circumstances of appellant's illnesses rendered him incapable of exercising ordinary business care and prudence and prevented him from timely paying his taxes.

Finally, we consider whether appellant's illnesses had persisted continuously during the period in which the failure to pay taxes continued, which is when the returns were due to when appellant made full payment in October 2020. Appellant has been under Dr. Corrado's care since 2009. Since then, Dr. Corrado has been treating appellant consistently and seeing him at least once a week. Since appellant's 2013 comprehensive neuropsychological evaluation showed significant mental deficits, Dr. Corrado states that appellant's condition has not improved. Furthermore, Dr. Reynolds's medical-legal evaluation, which verifies appellant's numerous medical conditions, was performed in 2021 – after appellant had made full tax payment in October 2020. Therefore, we find that appellant's illnesses have persisted continuously through the relevant period.

However, respondent argues that appellant remains employed and his tax returns report W-2 income, which indicates that appellant can exercise a level of ordinary care and prudence outside of tax matters. But appellant was hired as a trainee with a disability to perform a wide variety of routine unskilled or semiskilled tasks. Dr. Corrado notes that appellant receives significant accommodations in this employment and that, in his professional opinion, “but for these accommodations, [appellant] would not be able to maintain employment with [his employer].” Thus, the nature of appellant's employment does not support a finding that appellant is able to exercise ordinary care and prudence with respect to paying taxes timely.

In summary, we find that appellant has proven by the preponderance of the evidence that his illnesses continuously rendered him incapable of exercising ordinary business care and prudence and prevented him from timely paying his taxes during the relevant period. Accordingly, appellant has established that his failure to timely pay taxes was due to reasonable cause. Accordingly, we find appellant has shown reasonable cause to abate the late-payment penalties for the 2016, 2017 and 2019 tax years.⁴

Issue 2: Whether the late-filing penalty should be abated due to reasonable cause for the 2018 tax year.

A penalty shall be imposed for the failure to file a return on or before the due date unless it is shown that the late filing is due to reasonable cause and not due to willful neglect. (R&TC, § 19131(a).) Here, it is undisputed that respondent properly computed the late-filing penalty and that appellant filed his return late. In addition, as with the late-payment penalty, respondent does not assert that willful neglect is present in this case. Therefore, the only issue is whether appellant has demonstrated reasonable cause for the late filing.

To establish reasonable cause, the taxpayer must show that the failure to timely file a return occurred despite the exercise of ordinary business care and prudence. (*Appeal of GEF Operating Inc.*, 2020-OTA-057P.) The late-filing and the late-payment penalties generally deal with the same questions and weigh the same evidence for purposes of making reasonable cause determinations. (*Appeal of Berolzheimer* (86-SBE-172) 1986 WL 22860.)

⁴ Appellant also argues that he hired a tax professional to manage his taxes for the 2016-2019 tax years. However, we need not address this argument as we have already found reasonable cause exists due to appellant's illnesses.

Here, as with the late-payment penalty, appellant contends the late-filing penalty should be abated because his illnesses continuously rendered him incapable of exercising ordinary business care and prudence and prevented him from filing his 2018 return during the period when his 2018 return was due on April 15, 2019, to when he filed his return on January 8, 2020. We agree. For the same reasons expressed above, appellant has shown reasonable cause exists to abate the late-filing penalty.

HOLDINGS

1. The late-payment penalties are abated due to reasonable cause for the 2016, 2017, and 2019 tax years.
2. The late-filing penalty is abated due to reasonable cause for the 2018 tax year.

DISPOSITION

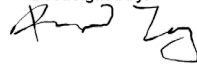
Respondent's actions are reversed accordingly with regard to the late-payment penalties and the late-filing penalty, and appellant's refund claim is allowed regarding those penalties.⁵

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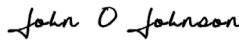
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 Huy "Mike" Le
 Administrative Law Judge

We concur:

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 Richard Tay
 Administrative Law Judge

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 John O. Johnson
 Administrative Law Judge

Date Issued: 5/19/2022

⁵ We are not allowing the parts of the refund claim related to the estimated tax penalties and any interest unrelated to the late-payment and late-filing penalties.