

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

In the Matter of the Appeal of: ) OTA Case No. 21088461  
 A. SRIROCHANAKUL )  
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**OPINION**

Representing the Parties:

For Appellant: A. Srirochanakul

For Respondent: Timothy Brown, Graduate Student Assistant

A. KLETTER, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, A. Srirochanakul (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant's claim for refund of \$1,239.00 for the 2018 tax year.

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

**ISSUES**

1. Whether appellant has shown reasonable cause for the late filing of appellant's 2018 California tax return.
2. Whether appellant is entitled to interest abatement.

**FACTUAL FINDINGS**

1. Appellant is a California resident who earned sufficient income to prompt a filing requirement. Appellant's 2018 California tax return was due on April 15, 2019. Appellant failed to timely file the 2018 California tax return.
2. On July 21, 2020, FTB sent appellant a Request for Tax Return. When appellant did not respond, FTB estimated appellant's income and on November 13, 2020, issued a Notice of Proposed Assessment (NPA) for tax due, a late-filing penalty, and interest.
3. FTB received appellant's 2018 California tax return on December 7, 2020, more than

- 19 months after it was due. Appellant's return reported that tax was owed. FTB accepted the return as filed and issued a Notice of Tax Return Change on January 19, 2021, imposing a late-filing penalty of \$834.50 and interest of \$403.06.
4. On February 3, 2021, appellant paid the outstanding balance.
  5. On May 10, 2021, appellant filed a claim for refund based on reasonable cause. FTB denied the claim on June 21, 2021.
  6. This timely appeal followed.

### DISCUSSION

#### Issue 1: Whether appellant has shown reasonable cause for the late filing of appellant's 2018 California tax return.

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. 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 25 percent of the tax. (R&TC, § 19131(a).) When FTB imposes this penalty, the law presumes that it is correct. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509; *Appeal of Xie*, 2018-OTA-076P).

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 the circumstances. (*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 correct. (*Concrete Pipe and Products of California, Inc. v. Construction Laborers Pension Trust for Southern California* (1993) 508 U.S. 602, 622.) Appellant must provide credible and competent evidence supporting a claim of reasonable cause; otherwise the penalty cannot be abated. (*Appeal of Xie, supra.*)

Here, appellant's 2018 California tax return was due on April 15, 2019. Appellant asserts that the post office lost both the California and federal tax returns for the 2018 tax year, and that the IRS provided a refund to appellant. Appellant provides no information other than these

unsupported assertions. Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Mauritzson*, 2021-OTA-198P.)

If taxpayers place a return in a United States mailbox before the statutory filing deadline and there is no record of that return being received, the taxpayers must offer evidence, such as a registered or certified mail receipt, that the return was timely filed. (Gov. Code, § 11003; Internal Revenue Code (IRC), § 7502; Cal. Code Regs., tit. 18, § 30219(a); *Appeal of La Salle Hotel Co.* (66-SBE-071) 1966 WL 1412.) Taxpayers “[assume] the risk that the postmark will bear a date on or before the last date ... prescribed for filing the [return],” and have the burden of proving the date of the postmark or the return was timely mailed. (Treas. Reg. § 301.7502-1(c)(1)(iii).) IRC section 7502 and Treasury Regulation section 301.7502-1 provide that, aside from proof of actual timely delivery, which we do not have here, a taxpayer can use a postmarked envelope or a postmarked registered or certified mailing receipt to prove the date a document was filed with the IRS. R&TC section 21027 provides that Treasury Regulation section 301.7502-1, as revised on January 10, 2001, is also applicable to filings with FTB.<sup>1</sup>

Appellant does not satisfy the burden of proving that the 2018 California tax return was timely filed because appellant provided no evidence of a postmarked envelope, a postmarked registered or certified mailing receipt, or a confirmation of electronic filing. Thus, appellant has not established that the 2018 California tax return was timely filed.

Appellant filed the 2018 tax return on December 7, 2020, more than 19 months after the due date for the return. Even if the IRS abated any late-filing penalty it may have imposed, presumably under the first-time abatement allowance, which appellant has not established, California has not enacted similar legislation or otherwise instituted a means for abating late-filing penalties based solely on prior good filing history. (*Appeal of Xie, supra.*)

Thus, appellant has not satisfied the burden of proof to demonstrate reasonable cause for the late filing of appellant's 2018 tax return.

## Issue 2: Whether appellant is entitled to interest abatement.

Imposing interest is mandatory, and respondent cannot abate interest except where authorized by law. (R&TC, § 19101; *Appeal of Balch*, 2018-OTA-159P.) Interest is not a

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<sup>1</sup> Effective January 1, 2002, California amended R&TC section 21027 to add subdivisions (a)(2) and (b) to conform with specific provisions in IRC section 7502 regarding “designated delivery service” and “electronic filing.” Aside from those specific provisions, R&TC section 21027 does not conform to IRC section 7502 in its entirety. (See R&TC, § 21027, as amended by Stats. 2001, ch. 543 (SB 1185), § 20, West's Cal. Legis. Service.)


penalty; it is compensation for the use of money. (*Ibid.*) There is no reasonable cause exception to the imposition of interest. (*Appeal of Gorin*, 2020-OTA-018P.) Generally, to obtain relief from interest, taxpayers must qualify under R&TC section 19104, 19112, or 21012. (*Appeal of Balch, supra.*) Appellant does not specify why interest should be abated. Appellant does not allege that any of the three statutory provisions for interest abatement apply to the facts of this case; and based on the evidence in the record, we conclude that none of these statutory provisions apply. Therefore, appellant has not demonstrated any grounds for interest abatement.

#### HOLDINGS


1. Appellant did not show reasonable cause for the late filing of appellant's 2018 California tax return.
2. Appellant is not entitled to interest abatement.


#### DISPOSITION

We sustain FTB's denial of appellant's claim for refund.

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Asaf Kletter  
Administrative Law Judge

We concur:

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Amanda Vassigh  
Administrative Law Judge

DocuSigned by:  
  
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Michael F. Geary  
Administrative Law Judge

Date Issued: 4/5/2022