

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 21129364
G. KHURANA AND)
D. KAUR)
_____)

OPINION

Representing the Parties:

For Appellants: G. Khurana and D. Kaur

For Respondent: Christopher T. Tuttle, Tax Counsel III

A. KLETTER, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, G. Khurana and D. Kaur (appellants) appeal actions by respondent Franchise Tax Board (FTB) denying appellants’ claims for refund of \$674.00 for the 2019 tax year, and \$29.81 for the 2020 tax year.

Appellants waived the right to an oral hearing; therefore, the Office of Tax Appeals (OTA) decides this matter based on the written record.

ISSUES

1. Whether appellants have shown reasonable cause for the late filing of their 2019 California tax return.
2. Whether appellants have shown reasonable cause for the late payment of their 2020 tax liability.
3. Whether appellants are entitled to interest abatement for the 2019 or 2020 tax year.

FACTUAL FINDINGS

2019 Tax Year

1. Appellants untimely filed their joint 2019 California nonresident tax return on May 17, 2021. Appellants’ 2019 California tax return reported that tax was owed.
2. FTB accepted the return as filed and issued a Notice of Tax Return Change, imposing, as

relevant to this appeal, a late-filing penalty of \$674.

3. Subsequently, appellants remitted payment of \$773.26, consisting of the \$674.00 late-filing penalty, underpayment of estimated tax penalty, and applicable interest. Appellants timely filed a claim for refund for the 2019 tax year, requesting abatement of the penalties and interest based on reasonable cause.
4. FTB denied the refund claim, and this timely appeal followed.¹

2020 Tax Year

5. Appellants untimely filed their joint 2020 California resident tax return on May 28, 2021.² Appellants' 2020 California tax return reported that tax was owed.
6. FTB issued appellants an Income Tax Due Notice, informing them that it had imposed a late-payment penalty of approximately \$30.
7. Appellants timely filed a claim for refund for the 2020 tax year, requesting abatement of the penalty and interest based on reasonable cause.
8. FTB denied the refund claim, and this timely appeal followed.

DISCUSSION

Issue 1: Whether appellants have shown reasonable cause for the late filing of their 2019 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. When FTB imposes this penalty, the law presumes that the penalty was imposed correctly. (*Appeal of Xie*, 2018-OTA-076P.) In this appeal, there is no assertion of willful neglect and appellants do not dispute the late-filing penalty computation. Thus, OTA focuses here on reasonable cause.

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.) Illness or other

¹ Appellants are not contesting the underpayment of estimated tax penalty. Accordingly, OTA will not address the underpayment of estimated tax penalty further.

² Appellants filed a joint 2020 California resident tax return following their move to California.

personal difficulties may be considered reasonable cause, if taxpayers present credible and competent proof that they were continuously prevented from filing a tax return. (*Ibid.*) 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.) Appellants must provide credible and competent evidence supporting a claim of reasonable cause; otherwise, the penalty cannot be abated. (*Appeal of Xie, supra.*)

Here, appellants' 2019 California tax return was due on July 15, 2020.³ The extended deadline to file the return was October 15, 2020. (R&TC § 18567, Cal. Code Regs., tit. 18, § 18567; see also 2020 Form 540 Instructions). On appeal, appellants assert that the circumstances surrounding their personal and family medical issues, together with appellant G. Khurana's job loss, constitute reasonable cause for failure to timely file their 2019 California tax return.⁴

Concerning appellants' family and personal medical issues, appellants assert appellant D. Kaur's father was diagnosed with cancer in late 2017 and that appellants spent "the majority of the time taking him to doctors for his procedures." The duration of incapacity due to an illness of an immediate family member must approximate the period in which the taxpayer has the obligation to timely file. (*Appeal of Head and Feliciano*, 2020-OTA-127P.) The record contains no supporting evidence of the dates and times spent looking after appellant D. Kaur's father or that any delay caused by care for appellants' family member approximated the period of the tax filing deadline, between July 15, 2020, and October 15, 2020. As such, OTA finds that appellant D. Kaur's father's illness does not support a finding of reasonable cause.

Regarding appellant G. Khurana's job loss, appellants assert that G. Khurana's former employer retaliated against his whistleblowing and terminated him, and that a California lawsuit

³ On March 18, 2020, FTB published guidance postponing the deadline for filing a timely 2019 tax return to July 15, 2020. (*State Postpones Tax Deadlines Until July 15 Due to the COVID-19 Pandemic*, March 18, 2020, available at: <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2020-3-state-postpones-tax-deadlines-until-july-15-due-to-the-covid-19-pandemic.html>.)

⁴ Appellants mention other circumstances but assert in their appeal letter that "the delay in filing the taxes for 2019 was . . . primarily due to the challenges in the job and medical problems." Thus, OTA focuses on these grounds to determine whether reasonable cause exists.

is pending. Appellants provide no other information other than these unsupported assertions. Unsupported assertions are not sufficient to satisfy taxpayers' burden of proof. (*Appeal of Mauritzson*, 2021-OTA-198P.) Appellant G. Khurana's job loss does not support a finding of reasonable cause.

Appellants also assert that appellant G. Khurana developed severe irritable bowel syndrome, anxiety, migraines, and other medical issues that they allege constitute reasonable cause for the late filing of appellants' 2019 return. Appellants provide appellant G. Khurana's medical records from late 2019 through 2021. However, these records do not demonstrate that appellants were continuously prevented from filing a tax return from July 15, 2020, through October 15, 2020. The record shows that appellant G. Khurana continued his employment and cared for his sick family members. (See *Appeal of Head and Feliciano*, *supra*.)

Furthermore, appellants provide no evidence to show that appellant D. Kaur was unable to file the return in the absence of appellant G. Khurana's alleged inability to timely file. Appellants provide no evidence of steps taken to timely file their return or that they were prevented from filing their return despite the exercise of ordinary business care and prudence. (See *Appeal of Head and Feliciano*, *supra*.) Thus, appellants have not satisfied their burden of proof to demonstrate reasonable cause for the late filing of their 2019 tax return.

Issue 2: Whether appellants have shown reasonable cause for the late payment of their 2020 tax liability.

R&TC section 19132 imposes a late-payment penalty when taxpayers fail to pay the amount shown as due on the return by the date prescribed for the payment of the tax. Generally, the date prescribed for the payment of the tax is the due date of the return (without regard to extensions of time for filing). (R&TC, § 19001.) Here, FTB properly imposed the late-payment penalty because the payment due date for the 2020 tax year was May 17, 2021.⁵ Appellants did not satisfy their 2020 tax liability until May 28, 2021, one week after the due date.

The late-payment penalty may be abated where the taxpayers show that the failure to make a timely payment of tax was due to reasonable cause and was not due to willful neglect. (R&TC, § 19132(a)(1).) As with the late-filing penalty, there is no assertion of willful neglect

⁵ See *State Tax Deadline for Individuals Postponed until May 17, 2021*, March 19, 2021, available at: <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2021-03-state-tax-deadline-for-individuals-postponed-until-may-17-2021.html>.

and appellants do not dispute the late-payment penalty computation. Thus, OTA focuses here on reasonable cause.

To establish reasonable cause for the late payment of the tax, taxpayers must show that the failure to make timely payment of the proper amount of tax occurred despite the exercise of ordinary business care and prudence. (*Appeal of Moren*, 2019-OTA-176P.)⁶ The taxpayer bears the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Ibid.*) Taxpayer must present credible, competent, and relevant evidence to show error in FTB's determination. (*Appeal of Xie, supra.*)

Here, appellants assert the same grounds for reasonable cause for the failure to timely pay their 2020 tax liability as they claimed for their late filing for the 2019 tax year, discussed above. For the same reasons described above, OTA finds that the evidence in the record concerning appellant G. Khurana's job loss, care for appellant D. Kaur's father, and appellant G. Khurana's illness do not support a finding of reasonable cause for appellants' failure to timely pay their 2020 tax liability.

Issue 3: Whether appellants are entitled to interest abatement for the 2019 or 2020 tax year.

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 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.*) Appellants do not specify why interest should be abated for the 2019 or 2020 tax years. Appellants do 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, OTA concludes that none of these statutory provisions apply. Therefore, appellants have not demonstrated any grounds for interest abatement.


⁶ Since the issue of whether a taxpayer has demonstrated reasonable cause for failure to pay tax asks the same questions and weighs the same evidence as the inquiry of whether reasonable cause exists for failure to file a tax return, decisions analyzing whether reasonable cause existed for failure to timely file a tax return are persuasive authority for determining whether reasonable cause existed for the failure to timely pay the tax. (*Appeal of Triple Crown Baseball LLC*, 2019-OTA-25P.) However, the filing of a return and remittance of payment are uniquely different actions with different real-world effects, and often have different due dates and accordingly, it is important to keep these differences in mind when applying the law pertaining to one penalty to that of another penalty. (*Appeal of Moren, supra.*)

HOLDINGS

1. Appellants have not shown reasonable cause for the late filing of their 2019 California tax return.
2. Appellants have not shown reasonable cause for the late payment of their 2020 tax liability.
3. Appellants are not entitled to interest abatement for the 2019 or 2020 tax year.


DISPOSITION

FTB’s actions in denying appellants’ claims for refund are sustained.


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 Asaf Kletter
 Administrative Law Judge

We concur:

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 Administrative Law Judge

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 Ovssep Akopchikyan
 Administrative Law Judge

Date Issued: 7/15/2022