



4. On July 28, 2020, FTB issued a Demand for Tax Return, which instructed appellant-Williams to respond by September 2, 2020, by filing a 2018 tax return, providing a copy of that year's tax return, if already filed, or explaining why no return was required for 2018.
5. On September 24, 2020, appellants, a married couple, filed a joint 2018 California income tax return reporting a tax liability of \$376,288. Appellants also self-assessed a late filing penalty and interest totaling \$120,496 and an underpayment of estimated tax payment of \$9,651. After applying withholding payments of \$27,709, appellants reported a balance due of \$478,726. Appellants made payment with the return, satisfying their liability.
6. FTB reviewed appellants' return and abated the estimated tax penalty, which was offset by a mandatory e-pay penalty and additional interest, resulting in a refund of \$7,953.65 to appellants on September 29, 2020.
7. Appellants filed a timely Reasonable Cause – Individual and Fiduciary Claim for Refund seeking abatement of the late filing penalty in the amount of \$87,144.75.
8. On January 26, 2021, FTB denied appellants' claim for refund. This timely appeal followed.

#### DISCUSSION

R&TC section 19131 imposes a late-filing penalty where taxpayers fail 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.)

On appeal, there is no dispute that appellants failed to file a timely return for the 2018 tax year. Appellants also do not dispute the calculation of the penalty. Thus, FTB properly imposed the late-filing penalty. Nevertheless, appellants assert that there is reasonable cause for their failure to timely file a return arising from appellant-Williams' diagnosis of MDD.

Taxpayers must provide credible and competent evidence supporting a claim of reasonable cause to overcome the presumption of correctness. (*Appeal of Xie, supra.*) 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 cause existed as

would prompt an ordinarily intelligent and prudent businessperson to have so acted under similar circumstances. (*Appeal of Auburn Old Town Gallery, LLC*, 2019-OTA-319P.) Difficulty obtaining information does not constitute reasonable cause for the late filing of a return. (*Appeal of Xie, supra.*) Unsupported assertions are not sufficient to satisfy a taxpayer’s burden of proof. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.)

Mental illness or mental incapacity can constitute reasonable cause for the failure to file timely returns. (*Appeal of Belcher*, 2021-OTA-284P.) When taxpayers allege reasonable cause based on an incapacity due to illness, the duration of the incapacity must approximate that of the tax obligation deadline. (*Appeal of Belcher, supra*; *Appeal of Head and Feliciano*, 2020-OTA-127P.) To prevail, taxpayers 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. (*Appeal of Belcher, supra*, (citing *Williams v. Commissioner* (1951) 16 T.C. 893, 906.) However, if difficulties simply cause taxpayers to sacrifice the timeliness of one aspect of their affairs to pursue other aspects, taxpayers must bear the consequences of that choice. (*Appeal of Head and Feliciano, supra.*) Furthermore, when a joint return is filed by a married couple, each spouse has an obligation to ensure the timely filing of their joint return. (*Appeal of Head and Feliciano, supra.*)

Here, the evidence shows (and there is no dispute) that appellant-Williams was diagnosed with MDD during 2018. There is also no dispute that appellant-Williams was prescribed antidepressants at that time. Appellants make several assertions regarding appellant-Williams’ continuing incapacity, including the following: appellant-Williams’ prescription medication resulted in debilitating side effects; appellant-Williams lost his job in April 2019 as a result of the MDD; appellant-Williams changed medications at various times before the correct treatment was found; appellant-Williams’ condition did not improve until spring 2020. Appellants assert that when the correct medication was found, they engaged a CPA to prepare and file the 2018 return.

However, appellants have not provided any evidence in support of these contentions. Instead, the only evidence provided by appellants is a medical letter, which states with no further detail, that appellant-Williams “has been in treatment for [MDD] and has been on antidepressant

treatment since 2018.” We cannot determine from this document alone that appellant-Williams’ mental illness continually prevented him from filing a return when it was due in 2019.

Regardless of appellant-Williams’ condition, appellant-Matiz was also required to ensure the timely filing of their joint return. (See *Appeal of Head and Feliciano, supra.*) Appellants contend that appellant-Matiz is a Canadian citizen with no prior United States filing requirement. The purpose of this contention is unclear, but we take it as an assertion that appellant-Matiz did not know about the filing requirement. To that end, we note that appellants filed joint California returns as early as 2013 so appellant-Matiz must have been aware of the filing requirement. Further, ignorance of the law and appellants’ California filing requirement does not excuse the failure to file a return as required by statute. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.) As to whether appellant-Williams shared tax documents with appellant-Matiz, we conclude that this does not support a finding of reasonable cause. Difficulty obtaining information does not constitute reasonable cause for the late filing of a return. (*Appeal of Xie, supra.*)


Based on the foregoing, we find that appellant has not established that reasonable cause exists to abate the late-filing penalty.

HOLDING

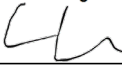
Appellants have not established that their failure to timely file a 2018 tax return was due to reasonable cause.

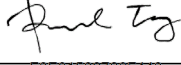
DISPOSITION

FTB’s denial of appellant’s claim for refund of the late-filing penalty is sustained.

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Keith T. Long  
Administrative Law Judge

We concur:

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Andrew J. Kwee  
Administrative Law Judge

DocuSigned by:  
  
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Richard Tay  
Administrative Law Judge

Date Issued: 8/1/2022