

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
M. JOHNSON

) OTA Case No. 20035984
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OPINION

Representing the Parties:

For Appellant: M. Johnson

For Respondent: Phillip C. Kleam, Tax Counsel III

S. HOSEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. Johnson (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$558.20 for the 2017 tax year.

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

ISSUE

Whether appellant has shown reasonable cause sufficient to abate the late-filing penalty.

FACTUAL FINDINGS

1. FTB received information in 2019 that appellant had sufficient income for a filing requirement for the 2017 tax year.
2. FTB issued a Request for Tax Return asking appellant to file a return or explain why appellant was not required to file a tax return.
3. Appellant filed a 2017 California tax return on October 14, 2019, along with payment.
4. FTB sent a Notice of Tax Return Change – Revised Balance to appellant, showing a balance of \$558.20 for the 2017 tax year, which included a \$408 late-filing penalty and \$150.20 of interest and fees.

5. Appellant paid the balance due for the 2017 tax year.
6. Appellant submitted a request for refund of \$558.20 claiming reasonable cause for not filing the 2017 California tax return, stating that appellant's employer never gave him a tax form and that she passed away.
7. FTB denied the claim for refund due to lack of reasonable cause for abatement of the late-filing penalty.
8. Appellant filed this timely appeal.

DISCUSSION

California imposes a penalty for the failure to file a return on or before the due date, unless it is shown that the failure is due to reasonable cause and not due to willful neglect. (R&TC, § 19131.) When FTB imposes a penalty, the law presumes that the penalty was imposed correctly. (*Appeal of Xie*, 2018-OTA-076P.) To overcome the presumption of correctness attached to the penalty, a taxpayer must provide credible and competent evidence supporting a claim of reasonable cause; otherwise, the penalty cannot be abated. (*Ibid.*)

To establish reasonable cause, a taxpayer must show that the failure to file a timely return 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 GEF Operating, Inc.*, 2020-OTA-057P.) A taxpayer has the burden of establishing reasonable cause. (*Appeal of Xie, supra.*) 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. (*Appeal of Belcher*, 2021-OTA-284P.)

There is no dispute that appellant filed his 2017 California Resident Income Tax Return late, and there is no dispute as to the calculation of the applicable late-filing penalty. The only issue on appeal is whether appellant has established reasonable cause for the late filing of his return.

Appellant states that his employer passed away and did not provide him with a tax form. However, difficulty in obtaining documentation does not constitute reasonable cause for the late filing of a return. (*Appeal of Xie, supra.*) It is well established that taxpayers have an obligation to file timely returns with the best available information, and then to subsequently file an

amended return, if necessary. (*Ibid.*) Appellant has not provided any argument or supporting evidence to show that he lacked the minimum level of information necessary to make a reasonable estimate of his taxable income.


Appellant also states that the IRS told him that he was entitled to a refund. Appellant's federal account transcript shows that the federal late payment penalty was abated based on his good filing history. However, appellant's filing and payment history do not support a finding of reasonable cause. (*Appeal of Xie, supra.*) Unlike the IRS, for the year at issue, California has not enacted legislation or otherwise instituted a means for abating late-filing penalties based solely on prior good filing history.¹ Instead, the law provides that the California late-filing penalty shall apply unless reasonable cause is shown. (R&TC, § 19131(a).) Appellant has not shown reasonable cause sufficient to abate the late-filing penalty.

HOLDING


Appellant has not shown reasonable cause sufficient to abate the late-filing penalty.

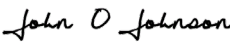
DISPOSITION

FTB's action is sustained in full.

DocuSigned by:

 6D3FE4A0CA514E7...
 Sara A. Hosey
 Administrative Law Judge

We concur:

DocuSigned by:

 CB1E7DA37831416...
 Josh Lambert
 Administrative Law Judge

DocuSigned by:

 873D9797B9E64E1...
 John O. Johnson
 Administrative Law Judge

Date Issued: 11/9/2022

¹ R&TC section 19132.5, effective for tax years beginning on or after January 1, 2022, allows an individual taxpayer to request a one-time abatement of a timeliness penalty. As the 2017 tax year is at issue here, this newly-enacted provision is inapplicable.