

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
R. DESAI

) OTA Case No. 22029821
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OPINION

Representing the Parties:

For Appellant:

R. Desai

For Respondent:

Leoangelo C. Cristobal, Tax Counsel

O. AKOPCHIKYAN, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, R. Desai (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s refund claim of \$557.50 for the 2019 tax year.

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

ISSUE

Whether appellant has established reasonable cause for failing to timely file his 2019 California tax return.

FACTUAL FINDINGS

1. Appellant untimely filed his 2019 California income tax return on July 26, 2021, after FTB sent appellant a Request for Tax Return (Request) upon obtaining third party information indicating appellant had a California filing requirement for 2019.
2. Appellant paid a late filing penalty for the 2019 tax year on August 15, 2021, and filed a refund claim on the same date requesting abatement of the penalty.
3. FTB denied the refund claim and this timely appeal followed.

DISCUSSION

California imposes a penalty for failing to file a return on or before the due date, unless the taxpayer shows that the failure is due to reasonable cause and not willful neglect. (R&TC, § 19131.) When FTB imposes a penalty, the law presumes the penalty was imposed correctly. (*Appeal of Xie*, 2018-OTA-076P.) A taxpayer may rebut this presumption by providing credible and competent evidence establishing reasonable cause. (*Ibid.*) Unsupported assertions are not enough to satisfy a taxpayer’s burden of proof. (*Appeal of Mauritzson*, 2021-OTA-198P.)

To establish reasonable cause, the taxpayer must show that the failure to file a timely return occurred despite the exercise of ordinary business care and prudence, or that such cause existed as would prompt an ordinarily prudent businessperson to have so acted under similar circumstances. (*Appeal of Head and Feliciano*, 2020-OTA-127P.)

There is no dispute that appellant filed his 2019 return after the due date. The issue on appeal is whether appellant has established reasonable cause for filing his return late. Appellant contends, without providing any evidence, that he filed his return late because of “chronic health issues,” “the general slowdown in waiting on other parties for reporting documents,” and his “California tax liability was still being assessed by a tax preparer as a result of an overseas relocation.” Appellant also notes that this is the first time he filed his return late.

OTA finds that appellant has not satisfied his burden of providing credible and competent evidence establishing reasonable cause. Indeed, the record does not contain any evidence supporting appellant’s assertions. Unsupported assertions are not enough to satisfy a taxpayer’s burden of proof. (*Appeal of Mauritzson, supra.*) Additionally, even if OTA assumes this is the first time appellant filed his return late, California law does not provide a first time abatement of timeliness penalties for the 2019 tax year. (*Appeal of Auburn Old Town Gallery, LLC*, 2019-OTA-319; but see R&TC, § 19132.5 [for tax years beginning on or after January 1, 2022, individual taxpayers may elect to request a one-time abatement of the late-filing penalty, in lieu of requesting abatement under R&TC section 19131].)

Accordingly, FTB’s imposition of the late filing penalty must be upheld.

HOLDING

Appellant has not established reasonable cause for failing to timely file his 2019 California tax return.

DISPOSITION

FTB’s action is sustained.

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Ovsep Akopchikyan

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Ovsep Akopchikyan
Administrative Law Judge

We concur:

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Josh Aldrich

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Josh Aldrich
Administrative Law Judge

DocuSigned by:

Kenneth Gast

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Kenneth Gast
Administrative Law Judge

Date Issued: 12/15/2022