

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 22029757  
J. PROFETA )  
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**OPINION**

Representing the Parties:

For Appellant: J. Profeta

For Respondent: Eric A. Yadao, Tax Counsel IV

For Office of Tax Appeals: Andrew Jacobson, Tax Counsel III

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. Profeta (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of the \$6,362.33 late filing penalty for the 2019 taxable year.

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

**ISSUE**

Whether appellant has established reasonable cause for failing to timely file his 2019 California personal income tax return (Form 540).

**FACTUAL FINDINGS**

1. Appellant did not file his 2019 Form 540 until March 19, 2021 (more than eight months late<sup>1</sup>), reporting a tax due (after withholdings) of \$25,449.33.
2. Consequently, respondent imposed a late filing penalty in the amount of \$6,362.33.

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<sup>1</sup> Due to COVID 19, the 2019 Form 540 was due on July 15, 2020, and not April 15, 2020. (See <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>)

3. Appellant subsequently paid his 2019 tax liability, including the late filing penalty, and filed a refund claim. After respondent denied the claim, appellant filed this appeal for only the late filing penalty.

### DISCUSSION

A late filing penalty shall be imposed when a taxpayer fails to file a tax return by either the due date or the extended due date, unless the taxpayer establishes that the late filing was due to reasonable cause and not due to willful neglect. (R&TC, § 19131(a).) The late filing penalty is calculated at 5 percent of the tax, for each month or a fraction thereof, that the return is late, with a maximum penalty of 25 percent of the tax.<sup>2</sup> (*Ibid.*) When respondent imposes a penalty, the law presumes that the penalty was imposed correctly. (*Appeal of Xie*, 2018-OTA-076P.) The taxpayer bears the burden of proving that reasonable cause exists to support an abatement of the penalty. (*Ibid.*; *Appeal of Wright Capital Holdings LLC*, 2019-OTA-219P; *Appeal of Triple Crown Baseball LLC*, 2019-OTA-025P.) To establish reasonable cause, the taxpayer must show that the failure to file timely returns occurred despite the exercise of ordinary business care and prudence, or that such cause existed as would prompt an ordinarily intelligent and prudent businessperson to have so acted under similar circumstances. (*Appeal of Head and Feliciano*, 2020-OTA-127P.) Unsupported assertions are insufficient to satisfy the taxpayer's burden. (*Appeal of Wright Capital Holdings LLC*, *supra.*)

Here, appellant does not argue that FTB incorrectly calculated the late filing penalty. Instead, appellant asserts that he had reasonable cause for the late filing of his 2019 Form 540 because he was dealing with litigation relating to his tenants, as well as negotiations with the lender that held the mortgage on his residential property. Appellant also asserts that he caught COVID-19 in November 2020 and was bedridden for approximately two weeks. Illness or other personal difficulties do not constitute reasonable cause when the difficulties simply result in the taxpayer sacrificing the timeliness of one matter so that other matters could be pursued. (*Appeal of Halaburka* (85-SBE-025) 1985 WL 15809; *Appeal of Orr* (68-SBE-010) 1968 WL 1640.) The taxpayer has the burden of proving that the difficulties experienced prevented the taxpayer from complying with his tax obligations. (*Appeal of Myers* (2001-SBE-001) 2001 WL 37126924; *Appeal of James* (83-SBE-009) 1983 WL 15396; see also *Stine v. U. S.* (Fed.Cl.

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<sup>2</sup> Although appellant's appeal letter states that the late filing penalty was \$6,980.00, the correct amount of the penalty is \$6,362.33, which is 25 percent of the \$25,449.33 tax due at the time his 2019 Form 540 was filed.

2012) 106 Fed.Cl. 586 [requiring “continuous incapacity”]; *Appeal of Halaburka, supra* [requiring taxpayers to be “continuously prevented” from filing a tax return].)


While appellant’s incapacity during November 2020 is notable, the fact that he was ill for two weeks more than three months after the July 15, 2020 return due date does not show that he was continuously prevented from filing his 2019 Form 540. Further, appellant has not shown that the litigation relating to his tenants prevented him from complying with his tax obligations. Thus, this panel finds that appellant did not establish reasonable cause for filing his 2019 Form 540 late.

HOLDING


Appellant did not establish reasonable cause for failing to timely file his 2019 Form 540.


DISPOSITION

Respondent’s action is sustained.

DocuSigned by:  
  
UC90542BE8804E7...  
Tommy Leung  
Administrative Law Judge

We concur:

DocuSigned by:  
  
D17AEDDCAAB045B...  
Asaf Kletter  
Administrative Law Judge

DocuSigned by:  
  
48745EB806914B4...  
Josh Aldrich  
Administrative Law Judge

Date Issued: 12/27/2022