

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
A. GOLDSTEIN

) OTA Case No. 220410115
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OPINION

Representing the Parties:

For Appellant: A. Goldstein

For Respondent: Josh Ricafort, Tax Counsel

For Office of Tax Appeals: Deborah Cumins,
Business Taxes Specialist III

J. ALDRICH, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, A. Goldstein (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$504 for the 2019 tax year.

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

ISSUE

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

FACTUAL FINDINGS

1. Appellant did not timely file her California Resident Income Tax Return (Form 540) for the 2019 tax year.
2. FTB obtained information indicating that appellant received sufficient income during tax year 2019 to meet the requirements to file a Form 540.
3. On October 5, 2021, FTB issued a Request for Tax Return.

4. On October 25, 2021, appellant filed a Form 540 for tax year 2019. The Form 540, which was prepared by a CPA, showed tax due of \$2,016. Appellant included a payment of \$2,016 with the return.
5. On November 1, 2021, FTB issued a Notice of Tax Return Change, imposing a late-filing penalty of \$504.00 and adding interest of \$124.31.
6. Appellant paid \$640.00 (payments of \$630.82 and \$9.18 were recorded by FTB as of January 11, 2022). FTB issued a refund of \$9.18 and applied the \$630.82 to the late-filing penalty of \$504.00 and interest of \$126.82.
7. On December 20, 2021, appellant filed a claim for refund.
8. On March 9, 2022, FTB denied appellant's claim for refund of the late-filing penalty.
9. This timely appeal followed.

DISCUSSION

R&TC section 19131 requires FTB to impose a late-filing penalty when a taxpayer does not file an income tax return on or before its due date, unless the taxpayer shows that the late filing was due to reasonable cause and not due to willful neglect. When FTB imposes a late-filing penalty, it is presumed to have been correctly imposed, and the burden of proof is on the taxpayer to show that reasonable cause exists to abate the penalty. (*Appeal of Xie*, 2018-OTA-076P.) To overcome the presumption of correctness, the taxpayer must provide credible and competent evidence supporting a claim of reasonable cause. (*Ibid.*) To establish reasonable cause, the taxpayer must show the failure to timely file occurred despite the exercise of “ordinary business care and prudence.” (*Appeal of Friedman*, 2018-OTA-077P.) The applicable standard of proof is by a preponderance of the evidence. (Cal. Code Regs., tit.18, § 30219(c).) Unsupported assertions are not sufficient to satisfy the taxpayer's burden of proof. (*Appeal of Scanlon*, 2018-OTA-075P.)

Here, appellant filed her Form 540 for tax year 2019 on October 25, 2021, which was more than 15 months after the July 15, 2020 due date.¹ Thus, the late-filing penalty was computed at the maximum percentage, 25 percent.² Appellant has not disputed the calculation of the penalty.

¹ Due to the COVID-19 pandemic, FTB extended the 2019 tax filing deadline to July 15, 2020.

² Since the penalty is 5 percent for each month or fraction thereof following the due date of the return, the penalty reaches the maximum of 25 percent at the end of the fifth month or fraction thereof.

Appellant argues, however, that the late-filing penalty should be abated because her failure to timely file the Form 540 for 2019 was the result of reasonable cause. Specifically, in her opening brief, appellant states that she is homebound and under medical care. Appellant also asserts that her vision is failing. In addition, appellant states that, because of her medical needs, a nurse visits twice a week. As further clarification of her arguments, appellant stated in her claim for refund with FTB that she had never had such income and had never filed returns. She explained that the income was related to funds received from her sister's estate. Further, appellant stated that she had no way of leaving home either during the COVID pandemic or currently.

In its response, FTB states that it has not received sufficient evidence from appellant to support a finding of reasonable cause, such as a report from a medical doctor demonstrating how appellant's poor health continuously prevented her from timely filing her Form 540.

Case law has established that a taxpayer's serious illness may constitute reasonable cause for failure to file a tax return when due. (*United States v. Boyle* (1985) 469 U.S. 241, 243, fn 1.) However, the illness must involve a combination of severity and timing that would have made it "virtually impossible" to comply with the filing requirement. (See *Estate of Stuller v. United States* (7th Cir. 2016) 811 F.3d 890 [holding that a taxpayer who had suffered through many tragic events in the 15 months before her return was due had not established reasonable cause because the events were not sufficiently severe and continuous to make it "virtually impossible" to comply with the filing requirements].) Here, appellant has described medical issues that keep her homebound and that require a nurse's visits twice a week. Appellant also states that her vision is failing. While we are sympathetic to appellant's described health issues, appellant has not provided any evidence that these issues made it "virtually impossible" to timely file her Form 540 for 2019.

Moreover, appellant filed her return less than three weeks after FTB issued the Request for Tax Return.³ Appellant's description of her medical issues does not indicate that her issues were worse in July 2020, when the return was due, than they were in October 2021, when the return was filed. Appellant has not shown that, during the period prior to July 15, 2020, her medical issues continuously prevented the timely filing of the return. (See *Appeal of Belcher*, 2021-OTA-284P.) Appellant also has not provided documentation, or even an explanation, to

³ The Request for Tax Return was issued October 5, 2021, and appellant filed the return October 25, 2021.

show why she could not have contacted her CPA before the July 15, 2020 due date. OTA finds that appellant has not established that her medical issues represent reasonable cause for her failure to timely file her Form 540 for 2019.

Furthermore, it is noted that appellant states she was unaware of the requirement to file a return. Appellant stated in her claim for refund with FTB that she had never been required to file a return previously, that her income in 2019 was related to her sister's estate, and that she had never had income of that amount in prior years. A taxpayer does not exercise ordinary business care and prudence when she fails to acquaint herself with the requirements of California tax law. (*Appeal of Porreca*, 2018-OTA-095P.) Hence, the fact that appellant may not have known that she was required to file a Form 540 for the year 2019 does not alter the finding that appellant has not established reasonable cause for her failure to timely file that return.

HOLDING

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

DISPOSITION

Sustain FTB's denial of appellant's claim for refund.

DocuSigned by:

Josh Aldrich

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Josh Aldrich
Administrative Law Judge

We concur:

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Michael F. Geary

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Michael F. Geary
Administrative Law Judge

DocuSigned by:

Natasha Ralston

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Natasha Ralston
Administrative Law Judge

Date Issued: 1/10/2023