

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of:  
**R. RIBNICK**

) OTA Case No. 220410242  
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**OPINION**

Representing the Parties:

For Appellant: R. Ribnick

For Respondent: Eric R. Brown, Tax Counsel III

O. AKOPCHIKYAN, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, R. Ribnick (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$1,240.25 for the 2020 tax year.

Appellant waived the right to an oral hearing; therefore, the 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 2020 California tax return.

**FACTUAL FINDINGS**

1. Appellant untimely filed his 2020 California resident income tax return on December 10, 2021.
2. FTB issued a Notice of Tax Return Change on January 10, 2022, imposing, among other things, a late filing penalty for the 2020 tax year.
3. Appellant paid the late filing penalty and filed a claim for refund on January 31, 2022, seeking abatement of the late filing penalty.
4. FTB denied the refund claim and this timely appeal followed.

### DISCUSSION

California imposes a penalty for failing to file a tax 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.)

Appellant asserts, without providing any evidence, that he filed his return late because (1) “COVID-19 made timely filing a tax return for this year a hardship,” and (2) his “preparer had [his] tax documentation and was unavailable to process the return in a timely manner because of the death in [the preparer’s] family, as they were needed in a larger familial capacity than normal.”

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.*) For example, there is no evidence establishing how COVID-19 specifically impacted appellant’s ability to timely file his tax return, or why appellant could not deliver duplicates of his tax documentation to another tax preparer to file the return on time. A taxpayer has a non-delegable obligation to file a tax return by the due date. (*Appeal of Mazdyasni*, 2018-OTA-049P.)

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 2020 California tax return.

DISPOSITION

FTB’s action is sustained.

DocuSigned by:  
*Ovsep Akopchikyan*  
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Ovsep Akopchikyan  
Administrative Law Judge

We concur:

DocuSigned by:  
*Josh Aldrich*  
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Josh Aldrich  
Administrative Law Judge

DocuSigned by:  
*Sheriene Anne Ridenour*  
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Sheriene Anne Ridenour  
Administrative Law Judge

Date Issued: 1/6/2023