

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

In the Matter of the Appeal of: ) OTA Case No. 220610520  
J. BANNON )  
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**OPINION**

Representing the Parties:

For Appellant: J. Bannon

For Respondent: Kamalpreet Khaira, Tax Counsel III

K. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. Bannon (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$1,381 for the 2020 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 established that the late-filing penalty was improperly imposed or that there was reasonable cause for failing to timely file her 2020 tax return.

**FACTUAL FINDINGS**

1. Appellant filed an untimely 2020 income tax return on November 15, 2021, reporting a balance due. Appellant remitted payment with the return.
2. On November 30, 2021, FTB issued a Notice of Tax Return Change – Revised Balance imposing a late-filing penalty of \$1,381.00 and interest. FTB subsequently issued an income tax due notice reflecting the combined penalty and interest amount of \$1,493.14.

3. On February 4, 2022, appellant paid the liability. Appellant also submitted a timely claim for refund. FTB denied the claim for refund, explaining that appellant failed to show reasonable cause for the late filing.<sup>1</sup>
4. This timely appeal followed.

### DISCUSSION

R&TC section 19131 imposes a late-filing penalty where a taxpayer fails to file a return when due, unless the failure is due to reasonable cause and not willful neglect. The penalty is calculated at five percent of the tax liability for each month or fraction thereof the return is past due, up to a maximum of 25 percent. (R&TC, § 19131.) When FTB imposes a penalty, there is a rebuttable presumption that the penalty was properly imposed. (*Appeal of Xie*, 2018- OTA- 076P.)

On appeal, appellant maintains that the 2020 tax return was filed timely. To determine whether the penalty is properly imposed, it must be examined whether the return was filed by the due date or within any allowed extension period for filing. Appellant’s 2020 tax return had an original due date of April 15, 2021. (R&TC, § 18566.) An automatic extension of six months is provided by regulation, dependent on the return being filed during that extension, which sets an extended due date of October 15, 2021, for 2020 tax returns. (R&TC, § 18567; Cal. Code Regs., tit. 18, § 18567.) Due to the COVID-19 pandemic, FTB postponed the filing due date for 2020 tax returns from April 15, 2021, to May 17, 2021 (“postponed due date”).<sup>2</sup> Appellant’s return was filed with FTB on November 15, 2021, which is more than six months after April 15, 2021, but less than six months after May 17, 2021. Accordingly, if the six-month automatic extension allowed under R&TC section 18567 is calculated from the original due date, then appellant’s return was filed late, but if it is instead calculated from the postponed due date, then the return was timely filed, and the late filing penalty was not properly imposed.

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<sup>1</sup> Appellant asserts that when FTB denied her claim for refund, FTB did not send certain forms required to make her appeal to OTA. However, the question in this case is whether appellant showed reasonable cause for her failure to file a timely return. There is no dispute that appellant filed a timely appeal to OTA. As such, whether FTB provided the required forms is not relevant and will not be discussed further.

<sup>2</sup> See <https://www.ftb.ca.gov/about-ftb/newsroom/2020-tax-year-extension-to-file-and-pay-individual.html>.

FTB’s authority to grant state of emergency postponements for tax-related acts is found in R&TC section 18572(b), which adopts Internal Revenue Code (IRC) section 7508A.<sup>3</sup> When applying the IRC for purposes of California personal income tax, IRS Treasury Regulations shall be applicable to the extent that they do not conflict with California personal income tax code sections or regulations. (R&TC, § 17024.5.) Treasury Regulation section 301.7508A-1(b)(3) provides that a postponement under IRC section 7508A runs concurrently with extensions of time to file and pay. Furthermore, “to the extent that other statutes may rely on the date a return is due to be filed, the postponement period will not change the due date of the return.” (Treas. Reg. § 301.7508A-1(b)(4).)

Accordingly, FTB’s state of emergency postponement of the due date to May 17, 2021, did not change the “original due date” of April 15, 2021, upon which the automatic six-month extension to file is calculated pursuant to R&TC section 18567. (Cal. Code Regs., tit. 18, § 18567(a).) Therefore, appellant’s return filed on November 15, 2021, was not timely filed within the automatic extension, which expired on October 15, 2021. Thus, FTB properly imposed the late-filing penalty. Nevertheless, appellant asserts that there is reasonable cause for her failure to timely file a return arising from electronic filing errors and her divorce proceedings.

A taxpayer must provide credible and competent evidence supporting a claim of reasonable cause to overcome the presumption of correctness. (*Appeal of Xie, supra.*) 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 cause existed as would prompt an ordinarily intelligent and prudent businessperson to have so acted under similar circumstances. (*Appeal of Auburn Old Town Gallery, LLC, 2019-OTA-319P.*) Difficulty obtaining information does not constitute reasonable cause for the late filing of a return. (*Appeal of Xie, supra.*) Unsupported assertions are not sufficient to satisfy a taxpayer’s burden of proof. (*Appeal of GEF Operating, Inc., 2020-OTA-057P.*)

Regarding the return’s electronic filing, appellant asserts that she attempted to file a return using Intuit’s TurboTax software. Appellant provided page one of a document titled “Electronic Filing Instructions for your 2020 California Tax Return,” which states in relevant

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<sup>3</sup> R&TC section 18572 only modifies IRC section 7508A to provide that postponements under this section apply to taxpayers affected by a state of emergency declared by the Governor of California, as opposed to a federally declared disaster.

part, “[d]o not mail a paper copy of your tax return. Since you filed electronically, the Franchise Tax Board already has your return.” The instructions page also indicates that a payment of \$5,524 was scheduled for April 15, 2021.<sup>4</sup>

Appellant concedes that Intuit attempted to notify her that the return was not filed. However, appellant asserts she did not receive correspondence from Intuit. Appellant contends that she was in the process of a divorce at that time and her email address was compromised by her former spouse.

Here, OTA has previously held that ordinary business care and prudence requires a taxpayer to ensure that a return submitted for e-filing was successfully transmitted to, and accepted by, FTB. “In the absence of an acknowledgment that a return was transmitted, received, or accepted, an ordinarily intelligent and prudent businessperson would have viewed the E-File History and acknowledgment records to confirm whether the return had been timely transmitted, received by Intuit, and accepted [by FTB].” (*Appeal of Quality Tax & Financial Services, Inc.*, 2018-OTA-130P; see also *Appeal of Auburn Old Town Gallery, LLC, supra.*)

As to appellant’s divorce, the record does not indicate whether appellant’s divorce proceedings and email access issues were ongoing through April 2021, when appellant first attempted to file and would have received the email indicating the attempt was unsuccessful. Therefore, appellant has not shown whether these events could constitute reasonable cause. Appellant’s unsupported assertions are insufficient to meet her burden of proof. (*Appeal of GEF Operating, Inc., supra.*)

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<sup>4</sup> Appellant did not provide the second page of this document. OTA cannot determine what, if any, additional information was contained therein.

HOLDING

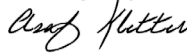
Appellant has not established that the late filing penalty was improperly imposed or that there was reasonable cause for failing to timely file her 2020 income tax return.

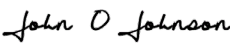
DISPOSITION

FTB’s denial of the claim for refund is sustained.

DocuSigned by:  
  
DC88A60D8C3E442...  
Keith T. Long  
Administrative Law Judge

We concur:

DocuSigned by:  
  
D17AFEDDCAAB045B...  
Asaf Kletter  
Administrative Law Judge

DocuSigned by:  
  
873D0707B0E84E1...  
John O. Johnson  
Administrative Law Judge

Date Issued: 12/22/2022