

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

In the Matter of the Appeal of:

**F. BAKHSHIAN AND**  
**M. BAKHSHIAN**

) OTA Case No. 220811029  
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**OPINION**

Representing the Parties:

For Appellant:

Sarah J. Hancock, Representative

For Respondent:

David Muradyan, Tax Counsel IV

L. KATAGIHARA, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, F. Bakhshian and M. Bakhshian (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$9,896.25 for the 2020 tax year.

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

**ISSUE**

Whether appellants have established reasonable cause to abate the late filing penalty.

**FACTUAL FINDINGS**

1. Appellants, Texas residents, sold real property located in the state of California in 2020.
2. Appellants untimely filed their joint California Nonresident Income Tax Return for the 2020 tax year on October 25, 2021, reporting the sale of the real property and a tax

- liability of \$39,585. Appellants did not remit the requisite payment by the postponed payment due date of May 17, 2021,<sup>1</sup> or with their untimely filed 2020 tax return.
3. Consequently, FTB issued a State Income Tax Balance Due Notice to appellants, proposing to assess the \$39,585.00 tax due, as well as a \$9,896.25 late filing penalty and interest.
  4. Appellants paid their balance and timely filed a claim for refund, which FTB denied.
  5. This timely appeal followed.

### DISCUSSION

A late filing penalty will be imposed when a taxpayer fails to file a tax return on or before its due date, unless the taxpayer establishes that the late filing was due to reasonable cause and was not due to willful neglect. (R&TC, § 19131(a).) When FTB imposes a penalty, the law presumes that the penalty was imposed correctly, and the burden of proof is on the taxpayer to show that reasonable cause exists to support abating the penalty. (*Appeal of Xie*, 2018-OTA-076P.) Unsupported assertions are insufficient to satisfy the taxpayer’s burden of proof. (*Ibid.*; *Appeal of Moren*, 2019-OTA-176P [“an assertion that records were difficult to obtain without any substantiation of efforts made to retrieve those records or otherwise showing that they were unobtainable is not sufficient to show reasonable cause”].)

To establish reasonable cause, taxpayers must show that the failure to file a timely return occurred despite the exercise of ordinary business care and prudence, or that an ordinarily intelligent and prudent businessperson would have so acted under similar circumstances. (*Appeal of Belcher*, 2021-OTA-284P.) Good faith reliance on professional advice may, in certain circumstances, provide a basis for finding reasonable cause. (*Appeal of Cremel and Koepfel*, 2021-OTA-222P.) Taxpayers must show that: (1) they reasonably relied on a tax professional for substantive tax advice as to whether a tax liability exists; (2) the person relied on by the taxpayers is a tax professional with competency in the subject of tax law; and (3) the tax professional’s advice is based on the taxpayers’ full disclosure of relevant facts and documents. (*Appeal of Summit Hosting LLC*, 2021-OTA-216P.)

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<sup>1</sup> In response to COVID-19, FTB postponed the deadline to May 17, 2021, for individual taxpayers whose 2020 tax returns and payments were originally due on April 15, 2021. (See <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2021-03-state-tax-deadline-for-individuals-postponed-until-may-17-2021.html>.)

Illness may also establish reasonable cause if taxpayers present credible and competent proof that they were continuously prevented from filing a tax return. (*Appeal of Belcher, supra.*) In instances where a joint return is filed, the evidence must show that both taxpayers were prevented from filing the return by the due date. (See *Appeal of Head and Feliciano, 2020-OTA-127P.*)

Here, appellants concede that their return was untimely filed but argue that the late filing was due to reasonable cause based on the following: (1) appellants believed they were not required to file a return in California based on advice from financial advisors; (2) appellant M. Bakhshian suffered an injury in 2019 that required surgery; and (3) appellants had difficulty selling the home and gathering documents due to COVID-19 restrictions. Appellants, however, have not provided any evidence to support these contentions, and unsupported assertions are insufficient to satisfy their burden of proof. (*Appeal of Xie, supra.*)

For example, appellants have not provided evidence that their financial advisors were tax professionals with competency in the subject of tax law and that their financial advisors' advice was based on appellants' full disclosure of relevant facts and documents. Instead, appellants' own statements refute such a finding. Specifically, appellants admit that their financial advisors were unaware that appellants were not California residents, and/or that the real property appellants sold was not appellants' primary or sole residence. Therefore, the Office of Tax Appeals (OTA) finds that appellants could not have reasonably relied on the advice they obtained from their financial advisors.

Nor have appellants provided evidence to support a finding that appellant M. Bakhshian sustained an injury in 2019 that required surgery, or that the alleged injury continuously prevented both appellants from filing their 2020 tax return by the due date in 2021. Because a joint return was filed, appellants are required to provide evidence that shows each of them were prevented from timely filing the tax return. (See *Appeal of Head and Feliciano, supra.*) However, appellants have not contended, let alone provided evidence, that appellant F. Bakhshian was unable to file the joint tax return by the due date. As such, appellants have not established reasonable cause for failing to timely file their tax return on the basis of illness.

Appellants also assert that they had difficulty selling the real property and gathering documents and information due to COVID-19 restrictions. However, appellants have not demonstrated the efforts they made to retrieve records from third parties or to acquire the

information necessary to determine the tax liability in advance of the return’s due date. (See *Appeal of Moren, supra.*) Nor have appellants explained how their difficulty in selling the real property is relevant here, as the resulting tax was not triggered until the sale was made.

Accordingly, OTA finds that appellants have not established reasonable cause to abate the late filing penalty.

HOLDING

Appellants have not established reasonable cause to abate the late filing penalty.

DISPOSITION

FTB’s action is sustained.

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*Lauren Katagihara*  
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Lauren Katagihara  
Administrative Law Judge

We concur:

DocuSigned by:  
*Sara A. Hosey*  
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Sara A. Hosey  
Administrative Law Judge

DocuSigned by:  
*Richard Tay*  
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Richard Tay  
Administrative Law Judge

Date Issued: 3/14/2023