

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of:  
**Y. ASNANI**

) OTA Case No. 220510415  
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**OPINION**

Representing the Parties:

For Appellant: Y. Asnani

For Respondent: Leoangelo C. Cristobal, Tax Counsel

V. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Y. Asnani (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$3,958.75 for the 2019 tax year.

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

**ISSUE**

Whether appellant is entitled to abatement of the late-filing penalty.

**FACTUAL FINDINGS**

1. Appellant did not timely file a 2019 California income tax return by the extended due date of October 15, 2020.<sup>1</sup>
2. Appellant’s federal wage and income transcript reports appellant received winnings from gambling activities from approximately 19 visits to casinos located throughout northern California and Nevada from June 17, 2020, to October 15, 2020.

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<sup>1</sup> In response to COVID-19, FTB postponed the due date for 2019 tax returns to July 15, 2020. Additionally, because FTB grants an automatic six-month extension from the original due date of the return, April 15, 2020, 2019 returns were considered timely through October 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>; *Appeal of Bannon*, 2023-OTA-096P.)

3. On July 28, 2021, appellant filed her 2019 return. FTB issued a Notice of Tax Return Change and imposed a late-filing penalty of \$3,958.75 and an estimated tax penalty of \$179.00.
4. Appellant paid the penalties and filed a claim for refund requesting waiver of the late-filing payment penalty. FTB denied appellant's claim for refund.
5. This appeal followed.

### DISCUSSION

R&TC section 19131 imposes a penalty for the failure to file a return on or before the due date, unless it is shown that the late filing is due to reasonable cause and not due to willful neglect. Here, it is undisputed FTB properly imposed the late-filing penalty. Because FTB does not assert willful neglect, the only issue is whether appellant has demonstrated reasonable cause for the late filing of the 2019 tax return.

To establish reasonable cause, the taxpayer must show that the failure to file a timely tax return 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 GEF Operating, Inc.*, 2020-OTA-057P.) A late-filing penalty imposed by FTB is presumed to be correct, and the burden of proof is on the taxpayer to establish that reasonable cause exists to support an abatement of the penalty. (*Appeal of Xie*, 2018-OTA-076P.)

Illness may establish reasonable cause where the taxpayer presents credible and competent proof that the circumstances of the illness prevented the taxpayer from complying with the law. (*Appeal of Triple Crown Baseball, LLC*, 2019-OTA-025P.) However, if the difficulties simply cause the taxpayer to sacrifice the timeliness of one aspect of the taxpayer's affairs to pursue other aspects, the taxpayer must bear the consequences of that choice. (*Ibid.*)

Appellant contends she was unable to timely file her tax return because of illness. Appellant's doctor states that appellant suffered from hypertension, migraines, depression, and anxiety from mid-2019 through 2020, and that these difficulties led to a loss of work and business.

Here, appellant has not presented sufficient evidence to establish that medical or financial difficulties prevented her from timely filing her tax return. Appellant's federal wage and income transcript indicates that appellant was able to travel widely to regularly visit casinos and engage

in gambling activities during 2020, prior to the due date of her 2019 tax return. The record shows that appellant chose to pursue other activities rather than timely file her 2019 return, and she must bear the consequences of that choice.

Appellant also contends that her accountant failed to timely file her tax return because he had surgery. It is well-settled that a taxpayer’s reliance on a tax professional to timely file a tax return is not reasonable cause for late filing. (*United States v. Boyle* (1985) 469 U.S. 241, 251; *Appeal of Boehme* (85-SBE-134) 1979 WL 4224.) As such, reliance on an accountant to timely file a tax return is not reasonable cause for late filing. Appellant had a non-delegable duty to timely file her return. (*United States v. Boyle, supra*, 469 U.S. at p. 247.) Accordingly, there is no basis to waive the late-filing penalty.

HOLDING

Appellant is not entitled to abatement of the late-filing penalty.

DISPOSITION

FTB’s action is sustained.

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*Veronica I. Long*  
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Veronica I. Long  
Administrative Law Judge

We concur:

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*Josh Lambert*  
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Josh Lambert  
Administrative Law Judge

DocuSigned by:  
*Teresa A. Stanley*  
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Teresa A. Stanley  
Administrative Law Judge

Date Issued: 4/28/2023