

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
M. SABA

) OTA Case No. 220610717
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OPINION

Representing the Parties:

For Appellant: Reza Azizi, EA

For Respondent: Josh Ricafort, Tax Counsel

S. HOSEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. Saba (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$2,606.50 for the 2020 tax year.

Appellant elected to have this appeal determined pursuant to the procedures of the Small Case Program. Those procedures require the assignment of a single administrative law judge. (Cal. Code Regs., tit. 18, § 30209.1) Appellant waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

ISSUE

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

FACTUAL FINDINGS

1. Appellant untimely filed a 2020 California Nonresident or Part-Year Resident Income Tax Return (return) on December 6, 2021, reporting tax due.
2. Appellant made a payment towards her tax liability on December 24, 2021. FTB sent a State Income Tax Balance Due Notice reflecting a late filing penalty of \$2,606.50. Appellant made a payment satisfying the remaining balance due on February 16, 2022.

3. FTB received a claim for refund from appellant requesting abatement of the penalty because she did not have all the information to file her return until November 5, 2021. FTB denied appellant's claim for refund.
4. This timely appeal followed.

DISCUSSION

California imposes a penalty for the failure to file a return on or before the due date, unless it is shown that the failure is due to reasonable cause and not due to willful neglect. (R&TC, § 19131.) When FTB imposes a penalty, the law presumes that the penalty was imposed correctly, and the burden of proof is on the taxpayer to establish otherwise. (*Appeal of Xie*, 2018-OTA-076P.) To overcome the presumption of correctness attached to the penalty, a taxpayer must provide credible and competent evidence supporting a claim of reasonable cause; otherwise, the penalty cannot be abated. (*Ibid.*)

To establish reasonable cause, a taxpayer must show that the failure to file a timely return occurred despite the exercise of ordinary business care and prudence, or that cause existed as would prompt an ordinary intelligent and prudent businessperson to have so acted under similar circumstances. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Ibid.*)

Here, appellant does not argue that the late filing penalty was improperly imposed; rather, appellant argues that she is entitled to relief because she was extremely busy taking care of patients due to the COVID-19 pandemic, which resulted in her being unable to timely file. Appellant also claims that she attempted to file her return on November 5 and November 15, 2021, but it was rejected by FTB each time. Appellant states that she had difficulty obtaining income records due to the COVID-19 pandemic.

Appellant's return was not filed by the automatic extended due date of October 15, 2021. While appellant claims that she made attempts to file her return on November 5 and November 15, 2021, appellant has not provided any documents or other evidence to support these attempts. FTB's records do not show any attempts from appellant to file a return until December 6, 2021. Furthermore, the dates appellant alleges she attempted to file her return are both past the extended due date to file a timely return.

Additionally, appellant has not provided evidence or support that an extremely busy time at work continuously kept her from timely filing her return. Moreover, even if she had, a

taxpayer's inability to file a return in a timely matter because of the pressure of business affairs or work pressures is not reasonable cause. (See *Appeal of Belcher*, 2021-OTA-284P.) While appellant also claims that she had difficulty obtaining documents due to the COVID-19 pandemic, she has not provided evidence to support this assertion. Furthermore, difficulty in obtaining information does not constitute reasonable cause for the late filing of a return. (*Appeal of Xie, supra.*)

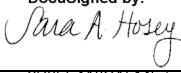
Based on the foregoing, appellant has not shown reasonable cause to abate the late filing penalty for the 2020 tax year.

HOLDING

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

DISPOSITION

FTB's action is sustained.

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Sara A. Hosey
Administrative Law Judge

Date Issued: 5/9/2023