

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 220510428
S. ROLLINSON)
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OPINION

Representing the Parties:

For Appellant: S. Rollinson

For Respondent: Maria Brosterhous, Tax Counsel IV

For Office of Tax Appeals (OTA): Nguyen Dang, Tax Counsel III

R. TAY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, S. Rollinson (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$711.85¹ for the 2018 tax year.

Appellant waived the right to an oral hearing; therefore, the OTA decides this matter based on the written record.

ISSUE²

Whether there is reasonable cause to abate the late-filing penalty and the R&TC section 19133 penalty (demand penalty).

¹ This amount represents penalties totaling \$498.50, a filing enforcement fee of \$97.00, and interest of \$116.35.

² Appellant disputes the imposition of the filing enforcement fee and interest but makes no separate argument on those issues. OTA finds no grounds for abatement in the record and will not discuss it further.

FACTUAL FINDINGS

1. Appellant and her spouse (the couple) failed to timely file a 2018 California income tax return.
2. On December 1, 2020, respondent issued to appellant's spouse a Demand for Tax Return (Demand) for the 2018 tax year which required him to file a California income tax return or explain why he was not required to file one, by January 6, 2021.
3. Appellant's spouse failed to respond to this Demand.³
4. Consequently, respondent issued a Notice of Proposed Assessment to appellant's spouse for the 2018 tax year proposing additional tax, penalties, a filing enforcement fee, and interest.
5. On July 20, 2021, the couple filed a 2018 joint California Nonresident or Part-Year Resident Income Tax Return (Return), which respondent accepted as filed.
6. As indicated on the State Income Tax Balance Due Notice dated July 27, 2021, respondent imposed a late-filing penalty of \$190.25 and a demand penalty of \$308.25 (the penalties) for the 2018 tax year, based on the tax reported on the Return.
7. The couple paid the balance due and shortly thereafter filed a refund claim for the 2018 tax year seeking abatement of the penalties, fees, and interest.⁴
8. Respondent denied the couple's refund claim in letter dated March 23, 2021.
9. Appellant timely filed this appeal.

DISCUSSION

Appellant argues that abatement of the penalties is warranted due to the insurmountable delays the couple, who live in New Zealand, faced while attempting to file the Return. Appellant points out that while the couple's California tax year ends on December 31, the couple's New Zealand tax year ends on March 31. Due to these different tax-year ending dates, appellant contends it was necessary for the couple's tax return preparer to prepare a second set of financial records for their business to file the Return. Appellant also asserts that after the preparation of

³ Appellant's spouse also failed to respond to a Demand issued by respondent for the 2017 tax year. Respondent therefore estimated his tax liability and issued a Notice of Proposed Assessment for that year.

⁴ It appears the couple also filed a refund claim for the 2017 tax year using the same "Reasonable Cause – Individual and Fiduciary Claim for Refund" form as it did for the 2018 tax year. The 2017 tax year is not at issue in this appeal.

the second set of financial records, the couple’s tax return preparer took an additional several months to prepare and file the Return. Finally, appellant argues that she was unable to timely respond to the Demand due to the significant amount of time required for respondent’s notices to reach her in New Zealand, and although she attempted to call respondent on several occasions (presumably to obtain a filing extension), respondent’s phone system hung up on her while she waited to speak to a customer service representative. Appellant’s position is unsupported by facts or documents, and thus, appellant has not carried her burden of proof.

Appellant’s position represents what is in essence a request for “reasonable cause” abatement. Certain penalties, such as the late-filing and demand penalties at issue here, may be abated based upon a showing of reasonable cause—that is, by demonstrating that the failure to timely act as required by law occurred despite the exercise of ordinary business care and prudence.⁵ (R&TC, §§ 19131(a), 19133.) The burden of establishing reasonable cause abatement in this matter lies with appellant. (*Appeal of GEF Operating, Inc., supra.*) Appellant must demonstrate, by a preponderance of the evidence, that she acted as an ordinarily intelligent and prudent businessperson would have acted under similar circumstances. (*Ibid.*) Unsupported assertions are insufficient to meet this burden. (*Appeal of Porreca, 2018-OTA-095P.*)

Appellant provided insufficient evidence to support the contentions set forth in her appeal or to show error in respondent’s proposed assessment, and this alone is grounds for denial. Moreover, even accepting these contentions as true, they do not establish reasonable cause for abating the late-filing penalty. Here, the couple had until December 15, 2019, to timely file the Return. (R&TC, § 18567 [filing deadline for taxpayers living or travelling abroad is June 15 following the close of the tax year, plus an automatic six-month extension]; see also FTB Notice 91-3.) Thus, the couple had nearly a year following the close of the 2018 tax year to obtain the necessary records and file the Return. Appellant does not explain the efforts the couple undertook during this period to ensure the *timely* filing of the Return nor how, despite these efforts, they were prevented from doing so. In fact, the couple did not file the Return until July 20, 2021, which is over a year after the filing deadline had elapsed. This seems an inordinate amount of time to obtain the necessary records and to have their tax return preparer prepare and file the Return. Regardless, difficulty obtaining records or delays caused by a tax

⁵ Appellant concedes in her refund claim that she may have to “pay some late fees as my taxes are indeed late.” However, there is no basis for granting partial relief of the penalties at issue here.

return preparer do not constitute reasonable cause absent a showing that the taxpayer exercised ordinary business care and prudence. (*Appeal of Moren*, 2019-OTA-176P.)

Appellant’s contention regarding the demand penalty also lacks merit. The demand penalty is imposed for failing to furnish information or to file a tax return upon notice and demand by respondent. (R&TC, § 19133.) We acknowledge that mail delivery to New Zealand from California may have made the roughly 30-day deadline specified in the Demand difficult for appellant’s spouse to meet, even with the automatic extension. (See Cal. Code Regs., tit. 18, § 30203(c); Code Civ. Proc., § 1013.) However, there is no indication in the record that appellant or her spouse responded to the Demand within a reasonable timeframe after receiving it. Indeed, it was not until seven months after the Demand had been issued that the couple filed the Return. A reasonably prudent businessperson, upon receiving a notice from respondent clearly stating that a California income tax return (or a response indicating a return was not required) must be filed by a certain date to avoid the imposition of the penalty, appellant would have filed promptly with the best information available and later amended the return, if necessary. (See *Appeal of Moren*, *supra*.) The couple’s failure to timely respond in the manner required by the Demand is not excused by appellant’s unsuccessful attempts to obtain a filing extension from respondent via telephone.

For all the foregoing reasons, OTA finds no basis for abating the penalties.

HOLDING

Appellant has not shown there is reasonable cause to abate the penalties.

DISPOSITION

Respondent’s action is affirmed.

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Richard Tay
Administrative Law Judge

We concur:

DocuSigned by:

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Ovsep Akopchikyan
Administrative Law Judge

DocuSigned by:

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Michael F. Geary
Administrative Law Judge

Date Issued: 6/12/2023