

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
M. MAGANA

) OTA Case No. 220811109
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OPINION

Representing the Parties:

For Appellant: M. Magana

For Respondent: Di T. Nguyen, Graduate Student Assistant

For Office of Tax Appeals: Zack Sabbagh, Graduate Student Assistant

K. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. Magana (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$1,333.58 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.) Office of Tax Appeals (OTA) Administrative Law Judge Keith T. Long held an oral hearing for this matter electronically on June 16, 2023. At the conclusion of the hearing, the record was closed and this matter was submitted for an opinion.

ISSUE

Whether appellant has established reasonable cause for the late payment of tax such that the late payment penalty should be abated.¹

¹ On appeal, appellant seeks relief only from the late payment penalty. Therefore, OTA will not discuss the issue of whether appellant has established a basis to abate or waive interest.

FACTUAL FINDINGS

1. On October 5, 2021, appellant filed a timely California income tax return for the 2020 tax year. After applying withholding credits of \$3,979, appellant reported a tax due of \$17,781, which he paid upon filing the return.
2. On October 26, 2021, FTB issued a Notice of Tax Return Change-Revised Balance, imposing a late payment penalty of \$1,333.58, plus applicable interest. Appellant made a payment on November 8, 2021, satisfying the liability.
3. On November 12, 2021, appellant filed a copy of FTB 2917, Reasonable Cause-Individual and Fiduciary Claim for Refund, requesting abatement of the late payment penalty.
4. By letter dated February 16, 2022, FTB denied appellant's claim for refund. FTB also issued a May 6, 2022 Notice of Action confirming the denial.
5. This timely appeal followed.

DISCUSSION

Generally, the date prescribed for the payment of the tax is the due date of the return (without regard to extensions of time for filing). (R&TC, § 19001.) R&TC section 19132 imposes a late payment penalty when a taxpayer fails to pay the amount shown as due on the return by the date prescribed for the payment of the tax. When FTB imposes a penalty, it is presumed to have been imposed correctly. (*Appeal of Xie*, 2018-OTA-076P.) The late payment penalty may be abated if the taxpayer shows that the failure to make a timely payment of tax was due to reasonable cause and was not due to willful neglect. (R&TC, § 19132(a)(1).)

Here, appellant's payment was due on or before May 17, 2021.² There is no dispute that appellant did not remit payment until October 5, 2021, which was after the due date for payment. Appellant also does not dispute FTB's calculation of the penalty. Therefore, the late payment penalty was properly imposed. Nevertheless, appellant claims that there is reasonable cause to abate the late payment penalty.

To establish reasonable cause for a late payment of tax, a taxpayer must show that the failure to make a timely payment of the proper amount of tax occurred despite the exercise of

² As a result of the COVID-19 pandemic, FTB extended the due date for payment from April 15, 2021 to May 17, 2021. (See FTB's 2020 tax year extension notice (February 10, 2022) <https://www.ftb.ca.gov/about-ftb/newsroom/2020-tax-year-extension-to-file-and-pay-individual.html>.)

ordinary business care and prudence. (*Appeal of Moren*, 2019-OTA-176P.) The taxpayer bears the burden of proving that an ordinarily intelligent businessperson would have acted similarly under the circumstances. (*Appeal of Triple Crown Baseball*, 2019-OTA-025P.) The taxpayer's burden of proof is by a preponderance of the evidence. (Cal. Code Regs., tit. 18 § 30219(c).) Unsupported assertions are not sufficient to satisfy such burden of proof. (*Appeal of Scanlon*, 2018-OTA-075P.)

Illness or other personal difficulties may be considered reasonable cause if the taxpayer presents credible and competent proof that they were continuously prevented from filing a tax return. (*Appeal of Head and Feliciano*, 2020-OTA-127P.) For an illness of a family member to create reasonable cause, the duration of incapacity due to the illness must approximate that of the tax obligation deadline. (*Ibid.*) However, if the difficulties simply caused the taxpayer to sacrifice the timeliness of one aspect of their affairs to pursue other aspects, the taxpayer must bear the consequences of that choice. (*Ibid.*) The failure to timely remit the balance due on a tax liability caused by an oversight does not, by itself, constitute a reasonable cause. (*Appeal of Friedman*, 2018-OTA-077P.) A failure to pay will be considered to be due to reasonable cause to the extent that the taxpayer has made a satisfactory showing that he or she exercised ordinary business care and prudence in providing for payment of his or her tax liability and was nevertheless either unable to pay the tax or would suffer an undue hardship (as described in [Treasury Regulation] § 1.6161-1(b) of this chapter) if her or she paid on the due date. (Treas. Reg. § 301.6651-1(c)(1).) An “undue hardship” is defined in Treasury Regulation section 1.6161-1(b) as a “substantial financial loss” and not merely a “general statement of hardship,” but rather “more than an inconvenience to the taxpayer.”

Here, appellant asserts that there was reasonable cause for the late filing because appellant's sister and mother had medical hardships in March and June 2020, respectively, and he was required to provide care. During this time, appellant argues that he faced difficulties caused by the COVID-19 pandemic and was taking necessary medical precautions. Appellant contends that he had to fly between Los Angeles and San Francisco to take care of his sister, and also supported his mother during her hospital visits and eventual hospice care. However, OTA notes that all of these events happened in 2020, well before the due date for payment of May 17, 2021. While OTA recognizes that appellant faced a series of personal hardships, it is unclear how events in 2020 continuously prevented appellant from making a timely payment of

tax in 2021. Appellant has not provided any evidence that these hardships approximated the tax due date or continuously prevented him from making a timely payment of tax.

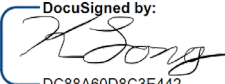
Appellant's unsupported assertions are insufficient to meet his burden of proof. (*Appeal of Scanlon, supra.*) Accordingly, OTA cannot conclude that there was reasonable cause for appellant's failure to timely pay the tax. Therefore, OTA finds no basis to abate the late payment penalty.

HOLDING

Appellant has not established reasonable cause for the late payment of tax such that the late payment penalty should be abated.

DISPOSITION

FTB's denial of appellant's claim for refund for the 2020 tax year is sustained.

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Keith T. Long
Administrative Law Judge

Date Issued: 7/27/2023