

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
COLIN HAMBLIN, A PROFESSIONAL) OTA Case No. 230513200
MEDICAL CORPORATION)
_____)

OPINION

Representing the Parties:

For Appellant: C. Hamblin, MD
For Respondent: Christopher T. Tuttle, Attorney

H. LE, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Colin Hamblin, A Professional Medical Corporation (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$5,557.50, plus applicable interest, for the taxable year ending September 30, 2020 (TYE 2020).¹

Appellant waived the right to an oral hearing; therefore, the Office of Tax Appeals (OTA) decides this matter based on the written record.

ISSUES

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

FACTUAL FINDINGS

1. Appellant did not file a California income tax return for TYE 2020.

¹ The \$5,557.50 amount consists of a late filing penalty of \$2,737.25, a demand penalty of \$2,737.25, and a filing enforcement cost recovery fee of \$83. Appellant does not provide specific arguments with respect to the filing enforcement cost recovery fee or with respect to any applicable interest; thus, those items will not be addressed further in this Opinion.

2. Respondent then issued a Demand for Tax Return (Demand) to appellant, requiring appellant to respond either by filing a TYE 2020 return, providing a copy of a previously filed return, or explaining why it did not need to file a return.
3. When appellant did not respond to the Demand, respondent issued a Notice of Proposed Assessment (NPA), imposing, among other items, the late filing penalty and the demand penalty.
4. In response, appellant filed a return for TYE 2020.
5. Then, respondent issued a Notice of Balance Due.
6. Appellant made payments and subsequently filed a claim for refund, seeking abatement of the penalties based on reasonable cause.
7. Respondent denied the refund claim, and this timely appeal followed.

DISCUSSION

Issue 1: Whether appellant has established reasonable cause to abate the late filing penalty.

California imposes a penalty for failing to file a tax return on or before the due date, unless the taxpayer shows that the failure is due to reasonable cause and not willful neglect.² (R&TC, § 19131.) When respondent imposes a penalty, the law presumes the penalty was imposed correctly. (*Appeal of Xie*, 2018-OTA-076P.) The burden of proof is on the taxpayer to show that reasonable cause exists to support an abatement of the penalty. (*Ibid.*)

To establish reasonable cause, the taxpayer must show that the failure to file a timely return occurred despite the exercise of ordinary business care and prudence, or that such cause existed as would prompt an ordinarily prudent businessperson to have so acted under similar circumstances. (*Appeal of Head and Feliciano*, 2020-OTA-127P.) Unsupported assertions are not enough to satisfy a taxpayer's burden of proof. (*Appeal of Mauritzson*, 2021-OTA-198P.)

Here, appellant does not dispute that its return was submitted late or that respondent properly calculated the late filing penalty amount. Thus, the only issue is whether appellant has demonstrated reasonable cause for its failure to timely file its tax return.

Appellant asserts that it filed its return late because of the impact of the COVID-19 pandemic on its medical practice, the passing of a family member, and the illness and passing of

² There is no evidence this record showing willful neglect or an allegation of willful neglect. Thus, the balance of this analysis shall focus only on whether appellants meet the standard for proving reasonable cause.

its CPA that allegedly resulted in a loss of its financial records. However, appellant provides no evidence to support its assertions. Thus, OTA finds that appellant has not established reasonable cause to abate the late filing penalty.

Issue 2: Whether appellant has established reasonable cause to abate the demand penalty.

R&TC section 19133 imposes a penalty when a taxpayer fails to file a return or provide information upon respondent’s notice and demand to do so, unless it is shown that the failure was due to reasonable cause and not willful neglect.


Here, appellant relies on the same arguments as to the demand penalty as it did for the late filing penalty. However, as previously discussed, appellant provides no evidence to support its assertions. Therefore, OTA finds that appellant has not established reasonable cause to abate the demand penalty.

HOLDINGS


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

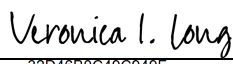
DISPOSITION

OTA sustains respondent’s action denying appellant’s claim for refund.

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 Huy "Mike" Le
 Administrative Law Judge

We concur:

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 Josh Aldrich
 Administrative Law Judge

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 Veronica I. Long
 Administrative Law Judge

Date Issued: 12/20/2023