

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: )  
N. SMEETS ) OTA Case No. 221011617  
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**OPINION**

Representing the Parties:

For Appellant: N. Smeets

For Respondent: Christopher T. Tuttle, Attorney

For Office of Tax Appeals: John Yusin, Attorney

R. TAY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, N. Smeets (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$1,160 for the 2020 tax year.

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

**ISSUE**

Whether appellant has established reasonable cause to abate the late filing penalty for the 2020 tax year.

### FACTUAL FINDINGS

1. On December 15, 2021, appellant filed an untimely California tax return for the 2020 tax year.<sup>1</sup>
2. On January 11, 2022, FTB issued a Notice of Tax Return Change – Revised Balance, imposing a late filing penalty of \$1,160 for the 2020 tax year.<sup>2</sup>
3. On April 5, 2022, appellant called FTB, asking if FTB had received a timely filed 2020 California tax return or correspondence from her tax preparer (the CPA) that explained why the 2020 return was filed late. FTB informed appellant the 2020 return and correspondence had not been received.
4. On March 30, 2022, appellant paid the penalty, plus interest.
5. Appellant filed a claim for refund dated June 11, 2022. Appellant explained the CPA's attempt to electronically file the 2020 return was rejected and appellant had to send the 2020 return by mail. Appellant also stated that the CPA's hard drive had crashed and, thus, the CPA's original correspondence that explained this was destroyed along with other documentation.
6. FTB denied appellant's claim for refund.
7. This timely appeal followed.

### DISCUSSION

FTB imposes a late filing penalty on a taxpayer who fails to file a return by either the due date or the extended due date, unless it is shown that the failure was due to reasonable cause and not willful neglect. (R&TC, § 19131(a).) 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 intelligent and prudent businessperson to have so acted under similar circumstances. (*Appeal of Head and Feliciano*, 2020-OTA-127P.) When FTB imposes a penalty, the law presumes that the penalty was

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<sup>1</sup> Appellant appears to have signed the tax return on October 10, 2021; however, the record shows appellant filed the return on December 15, 2021.

<sup>2</sup> Pursuant to R&TC section 18572(b), FTB postponed the individual filing due date, without extension, for the 2020 tax year by one month to May 17, 2021, due to COVID-19. (See <http://www.ftb.ca.gov/about-ftb/newsroom/news-releases-2021-03-state-tax-deadline-for-individuals-postponed-until-may-17-2021.html>.) FTB calculated the late filing penalty based on this date. Appellant does not dispute FTB's penalty calculation.

imposed correctly. (*Appeal of Xie*, 2018-OTA-076P.) Here, appellant does not dispute the late filing and does not dispute the calculation of the penalty.

Rather, appellant argues reasonable cause existed to excuse the late filing of her 2020 California income tax return. The burden of proof is on the taxpayer to show that reasonable cause exists to support an abatement of the late filing penalty. (*Appeal of Xie, supra.*) To overcome the presumption of correctness that attaches to the penalty, a taxpayer must provide credible and competent evidence supporting a claim of reasonable cause; otherwise, the penalty cannot be abated. (*Ibid.*)

Appellant argues that the COVID-19 pandemic caused extreme hardship to appellant, which prevented appellant from paying her 2020 tax year tax liability, and which OTA also interprets as preventing appellant from timely filing the 2020 return. Illness or other personal difficulties may be considered reasonable cause if the taxpayers present credible and competent proof that they were continuously prevented from filing a tax return. (*Appeal of Belcher*, 2021-OTA-284P.) When taxpayers allege reasonable cause based on an incapacity due to illness, the duration of the incapacity must approximate that of the tax obligation deadline. (*Ibid.*) However, if the difficulties simply caused the taxpayers to sacrifice the timeliness of one aspect of their affairs to pursue other aspects, the taxpayers must bear the consequences of that choice. (*Ibid.*)

Here, appellant has not specifically described the type or duration of any difficulties or incapacity that resulted from COVID-19, and thus the record does not show appellant was continuously prevented from timely filing the 2020 return. Additionally, appellant has not provided any other credible and competent evidence to establish appellant's assertions are more likely than not to be correct. (*Appeal of Belcher, supra.*) Thus, appellant has not shown reasonable cause based on the impacts of the COVID-19 pandemic on her life.

In appellant's claim for refund, appellant also argued that the CPA's purported attempt to timely electronically file her 2020 return was rejected, and that the CPA sent the 2020 return and a letter of explanation to FTB, which justify abatement of the penalty. However, these assertions are not supported by the evidentiary record and do not establish reasonable cause. Appellant argues that the CPA's hard drive crashed and relevant documentation was destroyed; however, she does not explain when these purported events occurred or why appellant did not file the 2020 return until December 2021. The penalty may not be abated where the taxpayer fails to provide


credible and competent evidence to support a claim for reasonable cause. (*Appeal of Xie, supra.*) Moreover, appellant’s reliance on the CPA does not constitute reasonable cause. It is well established that each taxpayer has a personal, non-delegable obligation to ensure the timely filing of a tax return, and thus, reliance on an agent to perform this act does not constitute reasonable cause to abate a late filing penalty. (*U.S. v. Boyle* (1985) 469 U.S. 241, 251-252; *Appeal of Quality Tax & Financial Services, Inc.*, 2018-OTA-130P.)

HOLDING

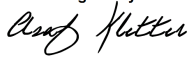
Appellant has not established reasonable cause to abate the late filing penalty for the 2020 tax year.

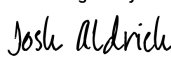
DISPOSITION

FTB’s denial of appellant’s claim for refund is sustained.

DocuSigned by:  
  
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Richard Tay  
Administrative Law Judge

We concur:

DocuSigned by:  
  
D17AEDDCAAB045B...  
Asaf Kletter  
Administrative Law Judge

DocuSigned by:  
  
48745BB806914B4...  
Josh Aldrich  
Administrative Law Judge

Date Issued: 2/2/2024