

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
E. MALDONALDO) OTA Case No. 230613715
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OPINION

Representing the Parties:

For Appellant: Philip L. Liberatore, CPA

For Respondent: Cynthia Kent, Attorney Supervisor

R. TAY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, E. Maldonado (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$1,886 for the 2021 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, § 30209.05(b).) Appellant waived the right to an oral hearing; therefore, Office of Tax Appeals (OTA) decides this matter based on the written record.

ISSUE

Whether appellant has shown FTB erred in its proposed assessment of the late filing penalty for the 2021 tax year.

FACTUAL FINDINGS

1. Appellant filed a California income tax return for the 2021 tax year on December 12, 2022.
2. FTB assessed the late filing penalty and issued a State Income Tax Balance Due Notice on December 27, 2022.
3. Appellant submitted a Reasonable Cause – Individual and Fiduciary Claim for Refund dated January 6, 2023, which explained the reason for the late filing. Specifically,

appellant asserted his e-filing attempt was rejected and also requested a one-time penalty abatement for “good compliance history.”

4. FTB denied appellant’s claim for refund in a letter dated March 30, 2023.

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 was due to reasonable cause and not due to willful neglect. (R&TC, § 19131.) Here, it is uncontroverted FTB received appellant’s 2021 California income tax return on December 12, 2022, almost 8 months after the original due date, and nearly 2 months after the extended due date. Thus, FTB’s imposition of the late filing penalty is presumptively proper. The penalty is computed at 5 percent of the tax due, after allowing for timely payments, for every month that the return is late, up to a maximum of 25 percent. (R&TC, § 19131(a).) The late filing penalty appears to have been correctly calculated and appellant has neither alleged nor proven any error in the computation.

The burden is on the taxpayer to establish reasonable cause for failing to timely file a return. (*Appeal of Xie*, 2018-OTA-076P.) A taxpayer may rebut this presumption by providing credible and competent evidence establishing reasonable cause. (*Ibid.*) Each taxpayer has a personal, non-delegable obligation to file a tax return by the due date. (*Appeal of Quality Tax & Financial Services, Inc.*, 2018-OTA-130P.) Appellant argues an e-file issue prevented him from timely filing his 2021 California income tax return; however, reliance on e-file software to file a tax return does not constitute reasonable cause unless appellant shows he acted as an ordinarily intelligent and prudent businessperson would have acted under similar circumstances. (*Ibid.*)

Appellant has not made such a showing. Although appellant alleges he attempted a timely e-filing, appellant provides scant information and evidence to show the attempted e-filing, the error that occurred, or his attempts to correct the error and make a timely filing. There is also no explanation for the nearly two-month delay from the purported attempted e-filing and the actual filing of his return. Without any such information and evidence, appellant has not demonstrated reasonable cause existed to excuse the late filing of his 2021 California income tax return. Appellant’s assertion that reasonable cause existed is unsupported, and unsupported

assertions are not sufficient to carry appellant's burden of proof. (*Appeal of Mauritzson*, 2021-OTA-198P.)

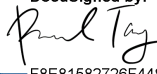
Lastly, appellant requests abatement based on his filing compliance history; however, OTA lacks authority to grant the requested relief based on appellant's good filing history. R&TC section 19132.5 authorizes one-time abatement of state income taxes for individual filers with a good filing history for tax years starting on and after January 1, 2022. Here, the tax year at issue is the 2021 tax year, and thus, OTA is not authorized to grant appellant's request for a one-time abatement of the late-filing penalty.

HOLDING

Appellant has not shown FTB erred in its proposed assessment of the late filing penalty for the 2021 tax year.

DISPOSITION

FTB's action is sustained in full.

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Richard Tay
Administrative Law Judge

Date Issued: 4/8/2024