

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 230613485
I. DONCHISHIN)
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OPINION

Representing the Parties:

For Appellant: I. Donchishin

For Respondent: Vivian Ho, Attorney

For Office of Tax Appeals: Nguyen Dang, Attorney

A. KLETTER, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, I. Donchishin (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$1,318.75 for the 2021 tax year.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 shown reasonable cause to abate the late-filing penalty.
2. Whether appellant is entitled to interest abatement.

FACTUAL FINDINGS

1. During the 2021 tax year, appellant received wage income from two employers, dividend income, and income from broker and barter exchange transactions.
2. Appellant untimely filed her 2021 California income tax return (return) on November 23, 2022. Appellant self-assessed interest and penalties of \$97.

¹ On appeal, appellant clarifies that her claim for refund is for \$1,345.48. Respondent’s Claim for Refund Denied letter dated May 17, 2023, denied appellant’s claim with respect to a \$1,318.75 late-filing penalty. The remaining \$26.73 of appellant’s claim is attributable to interest.

3. Respondent later imposed a late-filing penalty of \$1,318.75 plus applicable interest.
4. Appellant paid the balance due and timely filed a claim for refund for penalty abatement.
5. On May 17, 2023, respondent issued appellant a Claim for Refund Denied letter denying the claim for refund.
6. This timely appeal followed.

DISCUSSION

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

R&TC section 19131(a) 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. When respondent imposes a late-filing penalty, it is presumed to have been correctly imposed, and the burden of proof is on the taxpayer to show that reasonable cause exists to abate the penalty. (*Appeal of Cremel and Koepfel*, 2021-OTA-222P.) Appellant does not dispute the penalty calculation or that the return was filed late. Instead, appellant argues that the penalty should be abated due to difficulties in determining appellant's income, and personal and financial hardships experienced in 2022.

To establish reasonable cause, the taxpayer must provide credible and competent evidence establishing that the failure to timely file a return occurred despite the exercise of ordinary business care and prudence. (*Appeal of Cremel and Koepfel, supra.*) Appellant asserts that the following circumstances support a claim of reasonable cause: the computation of appellant's income involved multiple complex calculations that required gathering information from different exchanges regarding cryptocurrency transactions; during 2022, appellant worked two jobs and cared for her sick mother and her two children; appellant did not timely file the return because she lacked the funds at the time to pay the balance due; and appellant has a good compliance history regarding taxes.

Concerning the multiple complex calculations and the information gathering required to determine appellant's income, appellant's difficulty making computations or determining taxable income with exactitude does not constitute reasonable cause for late filing. (See *Appeal of Xie*, 2018-OTA-076P.) Difficulty in obtaining information does not constitute reasonable cause for the late filing of a return. (*Ibid.*) Rather, the exercise of ordinary business care and prudence

required appellant to estimate her tax liability, file a timely return with the best available information, and then to subsequently file an amended return, if necessary. (*Ibid.*)

Concerning appellant's personal difficulties and her work and home obligations, the law provides that illness or other personal difficulties may be considered reasonable cause if taxpayers present credible and competent proof that they were continuously prevented from filing a tax return. (*Appeal of Head and Feliciano*, 2020-OTA-127P.) 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.*) Taxpayers' selective inability to perform tax obligations, while performing their regular business, does not establish reasonable cause. (*Ibid*; *Kemmerer v. Commissioner*, T.C. Memo. 1993-394.)

Here, appellant was able to perform the duties of two jobs, indicating that appellant was capable of timely filing the return because she was able to conduct regular business affairs. (See *Appeal of Head and Feliciano*, *supra*.) Further, appellant provides no evidence of steps taken to timely file her return or that she was continuously prevented from filing her return despite the exercise of ordinary business care and prudence. (*Ibid.*) Appellant had to care for her sick mother and her children, but that alone does not constitute reasonable cause for the late filing of the return.

Regarding appellant's stated inability to pay the balance owed prior to the filing deadline, there is no requirement that the amount due as shown on a tax return must be paid to file the return. An ordinarily prudent businessperson in appellant's situation would file their tax return and make payment arrangements to pay the balance owed to the state, such as entering into a payment installment agreement with respondent or requesting a one-time delay of bill payment.² Therefore, appellant's contention that she lacked funds to pay the tax does not constitute reasonable cause to abate the late-filing penalty.

Appellant also requests reasonable cause abatement based on her good compliance history regarding taxes. However, while the IRS has a penalty abatement program called First Time Abate, neither the California Legislature nor respondent adopted a comparable

² See <https://www.ftb.ca.gov/pay/if-you-cant-pay/index.html>.

penalty abatement program for the 2021 tax year at issue.³ Thus, no relief is available on this basis.

Issue 2: Whether appellant is entitled to interest abatement.

Interest must be assessed from the date a tax payment is due through the date that it is paid. (R&TC, § 19101(a).) Imposing interest is mandatory; it is not a penalty, but it is compensation for the taxpayer's use of money after it should have been paid to the state. (*Appeal of Moy*, 2019-OTA-057P.) Generally, to obtain relief from interest, a taxpayer must qualify under R&TC section 19104 or 21012.⁴ Pursuant to R&TC section 19104, respondent is authorized to abate or refund interest if there has been an unreasonable error or delay in the performance of a ministerial or managerial act by an employee of respondent. Pursuant to R&TC section 21012, a taxpayer may be relieved of interest based on reasonable reliance on written advice from respondent.

Appellant does not allege that either of these two statutory provisions for interest abatement apply to the facts of this case, and OTA concludes based on the evidence in the record that none of these statutory provisions for abatement apply. Therefore, there is no basis to abate interest.

³ R&TC section 19132.5, effective for tax years beginning on or after January 1, 2022, allows a taxpayer to request a one-time abatement of a timeliness penalty. This provision is inapplicable to the 2021 tax year at issue.

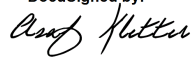
⁴ Under R&TC section 19112, respondent may waive interest for any period for which it determines that an individual or fiduciary is unable to pay interest due to extreme financial hardship. OTA does not have authority to review respondent's denial of a request to waive interest under R&TC section 19112. (*Appeal of Moy, supra.*)

HOLDINGS

1. Appellant has not shown reasonable cause to abate the late-filing penalty.
2. Appellant is not entitled to interest abatement.


DISPOSITION

Respondent’s action denying appellant’s claim for refund is sustained.


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 Asaf Kletter
 Administrative Law Judge

We concur:

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 Andrew Wong
 Administrative Law Judge

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 Lauren Katagihara
 Administrative Law Judge

Date Issued: 4/30/2024