

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
J. GREEN) OTA Case No. 230613627
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OPINION

Representing the Parties:

For Appellant: J. Green

For Respondent: Matthew D. Miller, Attorney Supervisor

For Office of Tax Appeals: Westley Marcelo, Attorney

K. GAST, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. Green (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$3,461.25, plus applicable interest, for the 2020 tax year.

Appellant waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

ISSUE

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

FACTUAL FINDINGS

1. Appellant did not timely file a 2020 California resident income tax return.
2. Respondent sent appellant a Request for Tax Return notice for the 2020 tax year. Appellant did not respond to the notice.
3. Respondent issued appellant a Notice of Proposed Assessment for the 2020 tax year that proposed to assess tax, a late filing penalty, and applicable interest.
4. Appellant untimely filed a 2020 California resident income tax return, reporting taxable income, withholdings, and tax due. Appellant included Form 1099-R, “Distributions

From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contract, etc.,” which was issued to appellant and shows a taxable amount.

5. Respondent processed the return and sent appellant notices that included a balance due for, among other items, a late filing penalty of \$3,461.25.
6. Appellant paid the full balance and filed a refund claim of \$4,564 that respondent denied in the amount of \$3,461.25, which is the late filing penalty. This timely appeal followed.

DISCUSSION

Appellant does not dispute that the 2020 tax year return was untimely filed or that respondent properly calculated the amount of the late filing penalty. Instead, appellant requests that the penalty be abated because he has allegedly not been required to file a return since 2011 and was unaware that he needed to file a 2020 tax year return. Appellant explains that his ex-wife passed away in 2019 without amending the beneficiaries of her pension to remove appellant and instead include appellant’s two daughters. Appellant asserts that his daughters requested the pension proceeds, but Form 1099-R was issued to appellant.

R&TC section 19131 imposes a late filing penalty where a taxpayer fails to file a return on or before its due date unless the taxpayer establishes that the late filing was due to reasonable cause and not willful neglect. To establish reasonable cause, a taxpayer must show that the failure to file a timely return occurred despite the exercise of ordinary business care and prudence, or that cause existed as would prompt an ordinarily intelligent and prudent businessperson to have so acted under similar circumstances. (*Appeal of Shanahan*, 2024-OTA-039P.) Even if the taxpayer is unaware of a filing requirement, ignorance of the law is not an excuse for failing to file a timely return. (*Ibid.*)

Appellant’s explanation does not constitute reasonable cause. Even if appellant was unaware of a filing requirement for the 2020 tax year, ignorance of the law is not an excuse for failing to file a timely return. (*Appeal of Shanahan, supra.*) Additionally, appellant did not exercise ordinary business care and prudence by assuming that the pension distribution, which is listed as a taxable amount on Form 1099-R, would not create a tax return filing requirement. Absent any other explanation, appellant has not established reasonable cause for the failure to timely file a 2020 tax return.

HOLDING

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

DISPOSITION

Respondent’s action in denying appellant’s claim for refund is sustained.¹

DocuSigned by:
Kenneth Gast
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Kenneth Gast
Administrative Law Judge

We concur:

DocuSigned by:
Lauren Katagihara
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Lauren Katagihara
Administrative Law Judge

DocuSigned by:
Huy "Mike" Le
A11783ADD49442B...
Huy “Mike” Le
Administrative Law Judge

Date Issued: 7/9/2024

¹ Appellant’s refund claim requests a refund of \$4,564, but appellant’s Request for Appeal before the Office of Tax Appeals (OTA) lists \$4,460 as the amount in dispute. Both these amounts are less than the \$3,461.25, which relates to the late filing penalty that respondent denied in its claim for refund denial letter that appellant appeals to OTA. To the extent the difference relates to interest imposed by respondent, appellant specifically requests that interest be abated in his Request for Appeal. However, appellant does not present any grounds for interest abatement and there is no general reasonable cause exception to the imposition of abatement. (*Appeal of Moy*, 2019-OTA-057P.) Therefore, appellant is not entitled to interest abatement.