

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of: )  
**R. SCOFIELD (DEC'D)** ) OTA Case No. 230814143  
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**OPINION**

Representing the Parties:

For Appellant: Luc Morisset, Representative

For Respondent: Paige Chang, Attorney

For Office of Tax Appeals: Thomas Lo Grossman, Attorney

V. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, R. Scofield<sup>1</sup> (Dec'd) (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant's claim for refund of \$2,325.25 for the 2019 tax year.

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

**ISSUE**

Has appellant met his burden of showing that the late-filing penalty should be abated?

**FACTUAL FINDINGS**

1. On June 8, 2021, FTB issued appellant a Request for Tax Return (Request) because FTB did not have a record of appellant's 2019 tax return.
2. Because FTB did not receive a response to the Request, it issued appellant a Notice of Proposed Assessment (NPA) on August 20, 2021.

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<sup>1</sup> The 2019 tax year liabilities at issue arose from a married filing jointly return. When the return was filed in 2021, R. Scofield signed as a surviving spouse, his wife having passed away. Subsequently, R. Scofield also passed away and the estate of R. Scofield is the party with an interest in this appeal.

3. In September 2021, appellant untimely filed a 2019 tax return and paid the amount reported as due.
4. On October 6, 2021, FTB issued appellant a Notice of Tax Return Change that imposed a late-filing penalty as well as interest, and showed that appellant had a balance due. Appellant paid the liabilities in full on October 6, 2021.
5. On June 7, 2023, appellant filed a claim for refund for the late-filing penalty on the grounds that due to appellant's age and medical condition, he required assistance to file his tax returns, and that such assistance was unavailable because appellant's nursing home prevented visitation during the period when appellant was supposed to file his tax return.
6. On July 5, 2023, FTB denied appellant's claim for refund.
7. Appellant timely appeals.

#### DISCUSSION

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 FTB 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.) To overcome the presumption of correctness, the taxpayer must provide credible and competent evidence supporting a claim of reasonable cause. (*Ibid.*) To establish reasonable cause, the taxpayer must show that the failure to timely file a return occurred despite the exercise of ordinary business care and prudence. (*Ibid.*) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Bannon*, 2023-OTA-096P.)

Here, appellant does not dispute the imposition or calculation of the penalty. Rather, appellant asserts two points. First, due to appellant's age and health conditions, he was unable to file tax returns without assistance. Second, due to COVID-19 restrictions, appellant was unable to obtain the required assistance until later in 2021. Appellant was asked by FTB to produce medical documentation to substantiate the first assertion and to provide documentation from appellant's assisted living center to prove the second assertion. Appellant provided no such documentation. Accordingly, appellant has failed to meet the burden of proof to show reasonable cause. (See *Appeal of Bannon*, *supra*.)

HOLDING

Appellant has not met his burden of showing that the late-filing penalty should be abated.

DISPOSITION

FTB’s action denying appellant’s claim for refund is sustained in full.

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Veronica I. Long  
Administrative Law Judge

We concur:

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*Asaf Kletter*  
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Asaf Kletter  
Administrative Law Judge

DocuSigned by:  
*Josh Lambert*  
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Josh Lambert  
Administrative Law Judge

Date Issued: 7/11/2024