

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
M. BARNHART) OTA Case No. 231114657
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OPINION

Representing the Parties:

For Appellant: M. Barnhart
For Respondent: Eric A. Yadao, Attorney

S. HOSEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. Barnhart (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$756.50, plus applicable interest, for the 2021 tax year.¹

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 untimely filed her 2021 tax year return on January 11, 2023, paying the balance reported as due on the same day.
2. FTB issued a Notice of Tax Return Change – Revised Balance stating appellant owed a balance of \$851.80, which was comprised of the late filing penalty of \$756.50, an underpayment of estimated tax penalty of \$3, and interest.

¹ Appellant’s appeal letter states the amount of \$851.80, which is a \$756.60 late filing penalty, plus \$92.30 in interest and a \$3 estimated tax penalty. Appellant does not specifically dispute the underpayment of estimated tax penalty or interest and it will therefore not be addressed further.

3. Appellant requested abatement of the late filing penalty because the mail in which her return was filed was stolen. Appellant paid the balance due and filed a claim for refund. FTB denied the refund and appellant timely appealed.

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.*)

Here, appellant's 2021 return was due on April 15, 2022. Appellant provides no evidence that the 2021 return was mailed with payment. Appellant argues that her tax returns and checks in the amount of \$27,934 were stolen from her mailbox in April 2022. She claims to have called the IRS (not FTB) in December 2022, to see if her return was processed, but then discovered that it had not been. She then reviewed her bank account and discovered that several fraudulent checks were written in April 2022, and assumed the tax returns and checks were stolen. However, appellant did not exercise ordinary business care and prudence because appellant did not contact FTB about her return until 10 months after the due date and waited eight months to check her bank accounts to see if the payments were processed. Furthermore, appellant has not provided a certified mail receipt. In the absence of an acknowledgment that a return was transmitted, received, or accepted, an ordinarily prudent businessperson would have reviewed his or her filing history and acknowledgment records for the return to confirm whether the return had been transmitted, received, and accepted. (*Appeal of Quality Tax & Financial Services, Inc.*, 2018-OTA-130P.) While the Office of Tax Appeals (OTA) is sympathetic to appellant's situation, longstanding precedent compels OTA to conclude that appellant has not shown reasonable cause for the late filing of her return for the 2021 tax year.

HOLDING

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

DISPOSITION

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

DocuSigned by:
Sara A. Hosey
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Sara A. Hosey
Administrative Law Judge

We concur:

DocuSigned by:
Lauren Katagihara
43F5DCA21D8D46B...
For
Lauren Katagihara
Administrative Law Judge

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

Date Issued: 7/30/2024