

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: )  
J. ROSENBLATT ) OTA Case No. 240115143  
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**OPINION**

Representing the Parties:

For Appellant: Bradley C. Wyatt, CPA  
For Respondent: Ariana Macedo, Graduate Legal Assistant

J. LAMBERT, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. Rosenblatt (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$6,158 for the 2021 tax year.<sup>1</sup>

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

**ISSUE**

Whether appellant has established a basis to abate the late filing penalty.

**FACTUAL FINDINGS**

1. On April 27, 2023, appellant untimely filed a California Resident Income Tax Return (Form 540) for the 2021 tax year.

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<sup>1</sup> This amount consists of a late filing penalty.

2. Because appellant did not file her return by the April 18, 2022 due date,<sup>2</sup> FTB imposed a late filing penalty of \$6,158, plus interest.
3. Appellant paid the amount due and filed a claim for refund for the penalty, which FTB denied.
4. This timely appeal followed.

### DISCUSSION

R&TC section 19131 imposes a late filing penalty on taxpayers who fail 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. To establish reasonable cause, taxpayers must show that the failure to file a timely return occurred despite the exercise of ordinary business care and prudence, or that such cause existed as would prompt an ordinarily intelligent and prudent businessperson to have so acted under similar circumstances. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.)

Appellant does not dispute the imposition or computation of the late filing penalty. Rather, appellant contends that she has reasonable cause for the late filing because she was under the 24-hour care of healthcare professionals and was unable to timely file. Appellant provides a statement from her physician dated December 21, 2023, stating: “[Appellant] has been a long time patient at my clinic and due to advanced age and ongoing medical conditions it is recommended that she be under 24 hour home health care.”

Illness or other personal difficulties may be considered reasonable cause if the taxpayers present credible and competent proof that they were continuously prevented from filing a tax return. (*Appeal of Head and Feliciano*, 2020-OTA-127P.) When taxpayers allege reasonable cause based on an incapacity due to illness or the illness of an immediate family member, the duration of the incapacity must approximate that of the tax obligation deadline. (*Ibid.*)

While appellant’s statement from her physician indicates that she has medical conditions and should be under 24-hour home healthcare in 2023, such information does not establish that appellant’s conditions prevented her from filing her return, or that such conditions existed in 2022 when her return was due. Appellant also provides no evidence of steps taken to timely file

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<sup>2</sup> The return due date for individuals filing on a calendar year basis is the 15th day of April following the close of the calendar year. (R&TC, § 18566.) However, Friday, April 15, 2022, was a federal holiday and therefore returns received on the following Monday, April 18, 2022, are considered by FTB to be timely filed. Therefore, the due date for payment of tax was April 18, 2022. (See R&TC, § 19001.)

her return or that she was prevented from filing her return despite the exercise of ordinary business care and prudence. As a result, appellant has not shown reasonable cause for failing to timely file her return.

Appellant also asserts that the penalty should be abated because she has a good filing history. R&TC section 19132.5(a), effective for taxable years beginning on or after January 1, 2022, allows an individual taxpayer to request a one-time abatement of a timeliness penalty based on a good filing history. As the 2021 tax year is at issue here, this newly enacted law is inapplicable.

HOLDING

Appellant has not established a basis to abate the late filing penalty.

DISPOSITION

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

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

We concur:

Signed by:  
*Veronica I. Long*  
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\_\_\_\_\_  
Veronica I. Long  
Administrative Law Judge

DocuSigned by:  
*Sara A. Hosey*  
6D3FE4A0CA514E7...  
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Sara A. Hosey  
Administrative Law Judge

Date Issued: 9/12/2024