

3. Appellant satisfied the outstanding balance due with payments made on April 24, 2022, and April 30, 2022.
4. Appellant then filed a claim for refund on Form 2917 for the late filing penalty. FTB denied the claim for refund.
5. Appellant then filed this timely appeal.

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.)

An illness or other personal difficulties may be considered reasonable cause if a taxpayer presents credible and competent proof that they were continuously prevented from filing a tax return. (*Appeal of Head and Feliciano*, 2020-OTA-127P.) When a taxpayer alleges 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.*) However, if the difficulties simply caused the taxpayers to sacrifice the timeliness of one aspect of their affairs to pursue other aspects, the taxpayer must bear the consequences of that choice. (*Ibid.*) A taxpayer's selective inability to perform tax obligations, while participating in regular business activities, does not establish reasonable cause. (*Ibid.*)

Appellant filed his 2020 tax return on November 14, 2021, six months after the May 17, 2021 due date.² Here, appellant does not dispute the imposition or calculation of the penalty. Rather, appellant asserts reasonable cause; specifically, that his parents' illnesses prevented appellant from filing his return on time. Appellant asserts he was required to provide constant care to his mother and father, and had limited time available for work or other tasks because of this constant care. While appellant asserts that he accompanied his parents to each

² Due to the COVID-19 pandemic, FTB provided an automatic extension of time to file 2020 tax returns until May 17, 2021, for the 2020 tax year.

medical visit and has submitted various medical records, appellant has not provided other corroborating evidence showing that his parents' illnesses continuously prevented him from filing a tax return. (See *Appeal of Head and Feliciano, supra.*) Unsupported assertions are not enough to satisfy appellant's burden of proof. (*Appeal of Bannon, supra.*) Furthermore, appellant argues that he could not participate in his regular business activities (i.e., insurance business) due to the constant care his parents required, and thus worked a part-time job and engaged in the sale of securities in order to financially support his family. However, appellant has not established that he was unable to participate in regular business activities because of his parents' illnesses, or that his parents required constant care that continuously prevented him from filing a tax return. A taxpayer who sacrifices his tax return filing obligations in favor of other activities has not established reasonable cause. (*Appeal of Belcher, 2021-OTA-284P.*) Accordingly, appellant has failed to meet the burden of proof to show reasonable cause.

HOLDING

Appellant has not shown reasonable cause to abate the late filing penalty for the 2020 tax year.

DISPOSITION

FTB's action is sustained.

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

We concur:

DocuSigned by:
Steven Kim
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Steven Kim
Administrative Law Judge

DocuSigned by:
Amanda Vassigh
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Amanda Vassigh
Administrative Law Judge

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