

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 230513350
B. ZELDIN)
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OPINION

Representing the Parties:

For Appellant: B. Zeldin

For Respondent: Camille Dixon, Attorney

G. TURNER, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, B. Zeldin (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$5,449.75 for the 2020 tax year.

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

ISSUE¹

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

FACTUAL FINDINGS

1. For the 2020 tax year, FTB obtained information that appellant received income sufficient to prompt a return-filing requirement.
2. FTB’s records indicated that appellant had not filed a 2020 California Resident Income Tax Return; therefore, FTB issued to appellant a Request for Tax Return (Request), which explained that FTB received information that indicated appellant may have had a filing requirement for the 2020 tax year.

¹ Appellant makes no separate claim for abatement of interest. As such, the Office of Tax Appeals will not discuss it further.

3. Appellant responded to the Request by filing his 2020 California return on August 16, 2022, reporting tax due of \$21,799.
4. FTB accepted appellant's return and issued a Notice of Tax Return Change - Revised Balance dated August 22, 2022, informing appellant that FTB imposed a late filing penalty of \$5,449.75, plus applicable interest, thus bringing appellant's total balance due to \$28,303.31 (tax due of \$21,799, plus late filing penalty of \$5,449.75, plus interest of \$1,054.56).
5. Appellant paid the balance due and filed a claim for refund, arguing that there was reasonable cause to abate the penalty.
6. FTB denied appellant's claim for refund.
7. This timely appeal followed. On appeal, appellant states he worked full time during his parents' illness and appellant provides documentation showing that his mother passed away on May 16, 2019, and his father passed away on November 28, 2020.

DISCUSSION

R&TC section 19131 imposes a late filing penalty where a taxpayer fails to file a return when due, unless the failure is due to reasonable cause and not willful neglect. The penalty is calculated at 5 percent of the tax liability for each month the return is past due, up to a maximum of 25 percent. (R&TC, § 19131(a).) When FTB imposes a penalty, the law presumes that it was imposed correctly. (*Appeal of Xie*, 2018-OTA-076P.)

A taxpayer must provide credible and competent evidence supporting a claim of reasonable cause to overcome this presumption of correctness. (*Appeal of Xie, supra.*) To establish reasonable cause, a taxpayer must show that the failure to file timely returns occurred despite the exercise of ordinary business care and prudence, or that the taxpayer acted as an ordinarily intelligent and prudent businessperson would have so acted under similar circumstances. (*Appeal of Auburn Old Town Gallery, LLC*, 2019-OTA-319P.) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.)

Here, appellant acknowledges that his 2020 tax year return was not filed timely, but contends that reasonable cause existed, and consequently, the late filing penalty should be abated. Specifically, appellant explains that both of his elderly parents were severely ill and were living in their home, and appellant was the only family member in the area. In addition,

appellant states that he lived 60 miles away and was working full time, while also trying to care for his parents. According to documents submitted by appellant, on May 16, 2019, appellant's mother passed away, and on November 28, 2020, his father passed away. Appellant contends that dealing with these very difficult circumstances, along with the onset of COVID-19, was overwhelming and caused "many things [to be] missed."

In response to appellant's explanations, the Office of Tax Appeals is sympathetic to appellant's difficult personal circumstances. The death or serious illness of a taxpayer or a member of a taxpayer's immediate family may constitute reasonable cause for a failure to file a tax return when due. (*U.S. v. Boyle* (1985) 469 U.S. 241, 243, fn. 1.) However, the death or illness must involve a combination of severity and timing that would have made it "virtually impossible" to comply and prevented the taxpayer's compliance with the filing requirement. (See *Estate of Stuller v. U.S.* (7th Cir. 2016) 811 F.3d 890, 899.)² Appellant did not file his tax year 2020 return, due on May 17, 2021,³ until August of 2022, and appellant's parents passed in 2019 and 2020. Although it is certainly possible, appellant has not shown how their passing the year prior involved a combination of severity and timing that prevented appellant's compliance with the filing requirement in 2021 for tax year 2020.

In addition, appellant states that he worked full time during his parents' illness. While appellant's circumstances are sympathetic, where circumstances cause a taxpayer to sacrifice the timeliness of one aspect of a taxpayer's affairs to pursue other aspects, the taxpayer must bear the consequences of that choice. (*Appeal of Triple Crown Baseball, LLC*, 2019-OTA-025P.)⁴

Therefore, appellant's unsupported assertions are not enough to satisfy the burden of proof. (*Appeal of GEF Operating, Inc., supra.*)

² *Estate of Stuller v. U.S., supra*, held that a taxpayer who had suffered through many tragic events in the 15 months before her return was due had not established reasonable cause because the events were not sufficiently severe and continuous to make it "virtually impossible" to comply with the filing requirements.

³ In response to COVID-19, pursuant to R&TC section 18572, FTB postponed the 2020 individual tax filing due date from April 15, 2021, to May 17, 2021. (See <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2021-03-state-tax-deadline-for-individuals-postponed-until-may-17-2021.html>.)

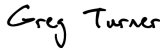
⁴ See *In re Carlson* (7th Cir. 1997) 126 F.3d 915, 923 [holding that taxpayer's ability run a profitable law firm, among other activities, supported that taxpayer's family member's illness did not create an undue mental or emotional hardship to excuse the payment of taxes].

HOLDING

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

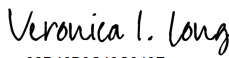
DISPOSITION

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


Signed by:

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Greg Turner
Administrative Law Judge

We concur:

Signed by:

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Veronica I. Long
Administrative Law Judge

Signed by:

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Seth Elsom
Hearing Officer

Date Issued: 11/12/2024