

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 221111756  
M. YORK-CARR )  
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**OPINION**

Representing the Parties:

For Appellant: M. York-Carr

For Respondent: David Muradyan, Attorney

For Office of Tax Appeals: Andrew Jacobson, Attorney

A. VASSIGH, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. York-Carr (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$1,998.51<sup>1</sup> for the 2019 tax year.

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

**ISSUES**

1. Whether appellant has established reasonable cause to abate the late filing penalty.
2. Whether appellant has established grounds to abate the underpayment of estimated tax (estimated tax) penalty.

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<sup>1</sup> In her opening brief, appellant filed an appeal in the amount of \$1,999. However, the Notice of Action listed the claim for refund as being for \$1,998.51, while appellant’s claim for refund filed with FTB on December 13, 2021, listed an amount at issue of \$1,999.51. The Office of Tax Appeals’ (OTA’s) acknowledgment letter dated December 13, 2022, acknowledged a claim for refund of \$1,998.51, which is the amount OTA lists in this appeal.

3. Whether appellant has established grounds for abating the collection cost recovery fee.
4. Whether appellant has established any basis to abate interest.

#### FACTUAL FINDINGS

1. Appellant made estimated tax payments on April 3, 2019, June 13, 2019, and January 9, 2020, respectively.
2. Appellant did not file her 2019 California Resident Income Tax Return (Form 540) (2019 California return) until April 1, 2021.
3. On her 2019 California return, appellant reported total tax of \$11,530, claimed California estimated and other payments of \$5,813, and self-assessed an estimated tax penalty of \$35, resulting in a total amount due of \$5,752. Appellant submitted a payment of \$5,752 with her return.
4. On June 9, 2021, FTB issued a Notice of Tax Return Change – Revised Balance, which stated that appellant owed a late filing penalty of \$1,429.25, an estimated tax penalty of \$36, and applicable interest. The notice listed a due date of June 24, 2021.
5. On July 21, 2021, FTB issued an Income Tax Due Notice that indicated appellant owed a penalty of \$1,465.25, plus applicable interest. The notice stated that if appellant did not pay the balance due by August 5, 2021, FTB may take collection action against her.
6. On August 25, 2021, FTB issued a Final Notice Before Levy and Lien, which stated that if the balance was not paid in full by the due date of September 9, 2021, FTB could impose a collection cost recovery fee. When the balance was not paid, FTB initiated collection action, and imposed the collection cost recovery fee of \$316. On December 6, 2021, FTB received a payment of \$1,999.51 on appellant's account through collection action.
7. On December 13, 2021, appellant filed a claim for refund for \$1,999.51 with FTB, in which she asserted that she had failed to timely file her 2019 California because her restaurant business had been closed by public authorities because of the COVID-19 epidemic and her tenants stopped paying rent, resulting in financial distress, and that she suffered from mental health issues because of these setbacks.
8. On August 26, 2022, FTB issued a Notice of Action of the Franchise Tax Board upon Taxpayer's Claim for Refund (NOA) that denied appellant's claim for refund the amount of \$1,998.51. The NOA noted that appellant had failed to show reasonable cause for the

abatement of the late filing penalty and had not provided grounds for removing the collection cost recovery fee or for abating interest.

9. Appellant then filed this appeal.

### DISCUSSION

#### Issue 1: Whether appellant has established reasonable cause to abate the late filing penalty.

R&TC section 19131 imposes a penalty for a taxpayer's failure to file a return on or before the due date, unless it is shown that the late filing is due to reasonable cause and not willful neglect. (R&TC, § 19131(a).) Appellant's 2019 California return had an original due date of April 15, 2020, which was extended to July 15, 2020.<sup>2</sup> Appellant does not contend that the late filing penalty was improperly imposed or computed but contends that reasonable cause exists to abate the penalty.

When FTB imposes the late filing penalty, the law presumes that it is correct. (*Appeal of Xie*, 2018-OTA-076P.) In the case where a taxpayer seeks to establish that a failure to act was due to reasonable cause, the taxpayer must show that the failure occurred despite the exercise of ordinary business care and prudence, or that cause existed as would prompt an ordinarily intelligent and prudent businessperson to have so acted under similar circumstances. (*Appeal of Triple Crown Baseball, LLC*, 2019-OTA-025P.)

Here, appellant asserts that she was prevented from timely filing her 2019 California return because she suffered from severe depression following the closure of her business during the COVID-19 pandemic. Illness or other personal difficulties may be considered reasonable cause, if 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, the duration of the incapacity must approximate that of the tax obligation deadline. (*Ibid*; see also *Wright v. Commissioner*, T.C. Memo. 1998-224.)

Mental illness or mental incapacity can constitute reasonable cause for the failure to timely file returns. (*Appeal of Belcher*, 2021-OTA-284P.) But the taxpayer must show that the "mental or emotional disorder . . . rendered the taxpayer incapable of exercising ordinary

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<sup>2</sup> In response to COVID-19, FTB postponed the due dates for returns, payments, and refund claims to July 15, 2020. See <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2020-3-state-postpones-tax-deadlines-until-july-15-due-to-the-covid-19-pandemic.html>.

business care and prudence during the period in which the failure to file continued.” (*Ibid*, citing *Wilkinson v. Commissioner*, T.C. Memo 1997-410.) Appellant has provided no evidence such as a doctor’s note or medical records to support her contention that she was severely depressed when her 2019 California Return was due on July 15, 2020. Appellant’s unsupported contentions are insufficient to meet her burden of proof to establish reasonable cause. (*Appeal of Triple Crown Baseball, LLC, supra.*)

Appellant also asserts that she suffered from financial hardship as a result of the closure of her business, which resulted in an alleged 2020 income of -\$18,077.

Although the OTA is sympathetic to appellant’s situation, it can only grant relief where the law specifically allows. (See *Appeal of Xie, supra.*) Appellant has provided no evidence to show that she was unable to timely file her 2019 California return due to financial hardship. Therefore, appellant has failed to establish reasonable cause for the late filing of her 2019 California return.

Issue 2: Whether appellant has established grounds to abate the estimated tax penalty.

California imposes estimated tax on certain income that is not subject to withholding. Internal Revenue Code (IRC) section 6654, as incorporated with some exceptions by R&TC section 19136, provides that taxpayers are required to pay estimated tax in four installments on the following dates: (1) April 15 of the tax year; (2) June 15; (3) September 15; and January 15 of the year following the tax year.<sup>3</sup> (IRC, § 6654(c).) When taxpayers fail to timely pay estimated tax, IRC section 6654 imposes an addition to tax, which is treated and often referred to as a penalty.

Using a California Form 5805, appellant self-assessed an estimated tax penalty of \$35. It is not clear how appellant computed this amount, because she did not complete all the necessary inputs on the Form 5805. FTB increased the amount of the estimated tax penalty by one dollar, from \$35 to \$36.

There is no general reasonable cause exception for the estimated tax penalty. (*Appeal of Johnson*, 2018-OTA-119P.) The estimated tax penalty is mandatory unless the taxpayer establishes that a statutory exception applies. (*Ibid.*) IRC section 6654, as incorporated with

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<sup>3</sup> R&TC section 19136.1(a)(2) also modifies IRC section 6654 by changing the percentages of the required payment due in each estimated tax installment under the Personal Income Tax Law. In California, 30 percent is due with the first installment, 40 percent is due with the second installment, no payment is due for the third installment and 30 percent is due with the fourth installment.

some exceptions by R&TC section 19136, provides an exception to the penalty. IRC section 6654(e)(3)(A) states that the penalty will not apply if, by reason of casualty, disaster, or other unusual circumstances, imposing the penalty would be against equity and good conscience. The phrase “casualty, disaster, or other unusual circumstances” generally refers to unexpected events that cause a hardship or loss such that, due to the circumstances, it would be inequitable to impose the estimated tax penalty. (*Appeal of Johnson, supra.*) Once again, appellant asserts that she suffered financial hardship and mental duress due to the outbreak of the COVID-19 epidemic and from the government-mandated closure of her restaurant in March 2020 as well as the loss of rent due to a government moratorium on evictions. However, appellant was required to make her estimated tax payment during the 2019 tax year, except for one payment due on January 15, 2020, which was prior to the government shutdown and eviction moratorium. (IRC, § 6654(c); R&TC, § 19136(a).)

Appellant has provided no argument or evidence pertaining to her situation prior to the COVID-19 pandemic and the closure of her business in March 2020, and how that affected her ability to pay the entire amount of her estimated tax.<sup>4</sup> Therefore, appellant has not established that her failure to make timely estimated tax payments was due to casualty, disaster, or other unusual circumstance and that the penalty would be against equity and good conscience sufficient to warrant a penalty waiver.

Issue 3: Whether appellant has established grounds for abating the collection cost recovery fee.

R&TC section 19254(a)(1) requires FTB to impose a collection cost recovery fee when FTB notifies a taxpayer that the continued failure to pay an amount due may result in the imposition of the fee, and the taxpayer fails to timely pay the amount due in response to the notice. Once FTB properly imposes the fee, there is no language in the statute that would excuse the fee for any reason, including reasonable cause. Thus, OTA’s inquiry is limited to determining whether FTB complied with the statutory notice requirements for imposing the collection cost recovery fee. (*Appeal of Auburn Old Town Gallery, LLC, 2019-OTA-319P.*)

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<sup>4</sup> IRC section 6654(e)(3)(B) provides that the taxing agency may waive the estimated tax penalty if it determines that the taxpayer retired after having attained age 62 in the taxable year for which estimated payments were required to be made or in the taxable year preceding such taxable year, and such underpayment was due to reasonable cause and not willful neglect. This provision is inapplicable in the current appeal, because appellant’s birthdate listed on her 2019 California Return shows that she did not attain the age of 62 during or prior to the 2019 tax year.

Here, FTB issued an Income Tax Due Notice dated July 21, 2021, which stated that if appellant did not pay the balance due before August 5, 2021, it could take collection action against her. FTB also issued a Final Notice Before Levy and Lien dated August 25, 2021, which stated that if the balance was not paid in full by the due date of September 9, 2021, FTB could impose a collection cost recovery fee.

The collection cost recovery fee was required to be imposed by R&TC section 19254 because appellant failed to pay the liability after receiving notice that continued failure to pay the liability may result in imposition of the fee. Appellant's amount due of \$1,999.51 was only satisfied on December 6, 2021, after FTB levied her bank account. OTA has no authority to abate or modify this fee, and appellant did not show that the fee was imposed for any invalid or improper reason. Therefore, OTA sustains FTB's imposition of the collection cost recovery fee.

Issue 4: Whether appellant has established any basis to abate interest.

Tax is due on the original due date of the return without regard to any filing extension. (R&TC, § 19001.) If a taxpayer does not pay the tax by the original due date of the tax return, or if FTB assesses additional tax, the law provides for charging interest on the balance due. (R&TC, § 19101.) Imposition of interest is mandatory; it is not a penalty, but it is compensation for a taxpayer's use of money after it should have been paid to the state. (*Appeal of Moy*, 2019-OTA-057P.) There is no reasonable cause exception to the imposition of interest. (*Ibid.*) To obtain relief from interest, a taxpayer must qualify under the waiver provisions of R&TC sections 19104, 19112, or 21012.<sup>5</sup> (*Ibid.*) In this case, appellant only provides reasonable cause type arguments for the abatement of interest. Appellant has not shown that she qualifies for waiver or abatement of interest under the provisions of R&TC sections 19104, 19112 or 21012.

Consequently, OTA concludes that appellant is not entitled to the abatement of interest.

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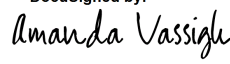
<sup>5</sup> Under R&TC section 19104, FTB is authorized to abate or refund interest if there has been an unreasonable error or delay in the performance of ministerial or managerial act by an employee of FTB. R&TC section 21012 may apply where there has been reliance on written advice requested of FTB. Appellant does not allege any unreasonable error or delay by FTB or that she relied upon written advice from FTB. Finally, OTA does not have jurisdiction over R&TC section 19112 relating to extreme financial hardship. (*Appeal of Moy, supra.*)

HOLDINGS

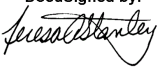
1. Appellant has failed to establish reasonable cause to abate the late filing penalty.
2. Appellant has failed to establish grounds to abate the estimated tax penalty.
3. Appellant has failed to establish grounds for abating the collection cost recovery fee.
4. Appellant has failed to establish any basis to abate interest.


DISPOSITION

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

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 Amanda Vassigh  
 Administrative Law Judge

We concur:

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 Teresa A. Stanley  
 Administrative Law Judge

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 Veronica I. Long  
 Administrative Law Judge

Date Issued: 11/13/2024