

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)	OTA Case No. 231014480
S. SCHATZ)	
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OPINION

Representing the Parties:

For Appellant:	S. Schatz
For Respondent:	Ariana Macedo, Graduate Legal Assistant
For Office of Tax Appeals:	Caroline Spaeth, Graduate Student Assistant

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, S. Schatz (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant's claim for refund of \$1,182.75 plus applicable interest for the 2020 taxable year.

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

ISSUES

1. Whether the late filing penalty should be abated.
2. Whether appellant has established a basis to abate interest.

FACTUAL FINDINGS

1. On May 15, 2023, appellant untimely filed his 2020 California tax return (Form 540) and paid the amount of tax due.
2. Respondent processed appellant's 2020 Form 540 and issued a Notice of Tax Return Change – Revised Balance, imposing a late filing penalty of \$1,182.75, plus interest, for a total balance due of \$1,609.31.

3. Appellant paid the \$1,609.31, and filed a refund claim therefor, requesting abatement of the late filing penalty and applicable interest.
4. Respondent denied appellant's claim for refund.

DISCUSSION

Issue 1: Whether the late filing penalty should be abated.

Due to the COVID-19 pandemic, respondent postponed the deadline for taxpayers to timely file their 2020 tax returns to May 17, 2021.¹ A late filing penalty is imposed when a taxpayer fails to file a return on or before the due date, unless the taxpayer establishes that the late filing was due to reasonable cause and not due to willful neglect. (R&TC, § 19131(a).) When respondent imposes a penalty, the law presumes that the penalty was imposed correctly, and the burden of proof is on the taxpayer to establish otherwise. (*Appeal of Xie*, 2018-OTA-076P.) To overcome the presumption of correctness attached to the penalty, appellant must provide credible and competent evidence supporting a claim of reasonable cause; otherwise, the penalty cannot be abated. (*Ibid.*)

To establish reasonable cause, a taxpayer must show that the failure to file a timely return 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 GEF Operating, Inc.*, 2020-OTA-057P.) Illness or other personal difficulties may be considered reasonable cause if a taxpayer presents credible and competent proof that he or she was continuously prevented from filing a tax return. (*Appeal of Head and Feliciano*, 2020-OTA-127P.) When the 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.*)

Here, appellant untimely filed his 2020 Form 540 on May 15, 2023. Appellant presents two arguments for reasonable cause on the late filing of his 2020 Form 540. First, appellant argues that the COVID-19 pandemic caused extreme hardship, which prevented appellant from timely filing the 2020 Form 540. Appellant asserts he experienced the death of his father in 2019 and the death of his brother in early 2022. Appellant claims he was the full-time advocate for his brother's healthcare and was unable to keep up on many of his obligations. However, appellant

¹ See <https://www.ftb.ca.gov/about-ftb/newsroom/2020-tax-year-extension-to-file-and-pay-individual.html>.

has not described the type or duration of any difficulties or incapacity that resulted from COVID-19. Appellant also has not provided any evidence that the deaths in 2019 and 2022 continuously or approximately prevented him from timely filing his Form 540 by the deadline of May 17, 2021. Appellant also claims he was taking care of his 88-year-old widowed mother; however, appellant has not presented any credible and competent evidence showing this prevented him from timely filing his 2020 Form 540.

Second, appellant argues that he did not receive refunds for the 2016, 2017, and 2018 taxable years. Appellant alleges that he used the wrong social security number for his child on his tax returns, but decided not to refile, leaving an extra \$852 in his account; thus, appellant argues it should be reasonable for respondent to waive the \$1,609.31 penalty and interest for 2020. However, no credit or refund is allowed unless appellant can show he filed a timely claim for refund. (See R&TC, § 19306.) Moreover, each taxable year stands on its own and must be reviewed separately. (See *Burnett v. Sanford & Brooks Co.* (1931) 282 U.S. 359, 365-366.)

Therefore, the late filing penalty cannot be abated.

Issue 2: Whether appellant has established a basis to abate interest.

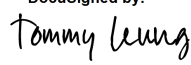
The imposition of interest is mandatory and accrues on a tax deficiency regardless of the reason for the underpayment. (R&TC, § 19101(a); *Appeal of Balch*, 2018-OTA-159P.) There is no reasonable cause exception to the imposition of interest. (*Appeal of Moy*, 2019-OTA-057P.) Therefore, to obtain interest relief appellant must qualify under R&TC section 19104 (pertaining to unreasonable error or delay by respondent in the performance of a ministerial or managerial act), 19112 (pertaining to extreme financial hardship caused by significant disability or other catastrophic circumstance), or 21012 (pertaining to reasonable reliance on the written advice of respondent). (*Ibid.*) This panel has no jurisdiction to make determinations under R&TC section 19112 (see *Appeal of Moy, supra.*), and appellant did not allege, and the record does not reflect, that R&TC sections 19104 or 21012 are applicable here. Therefore, there is no basis for abating interest.

HOLDINGS

1. The late filing penalty cannot be abated.
2. Appellant has not established a basis to abate interest.

DISPOSITION

Respondent's action is sustained.

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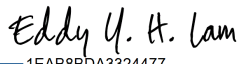
Tommy Leung
Administrative Law Judge

We concur:

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Josh Lambert
Administrative Law Judge

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Eddy Y.H. Lam
Administrative Law Judge

Date Issued: 12/31/2024