

¹ Appellant filed a claim for refund of \$76,213, which includes a late filing penalty of \$65,940 and interest of \$10,273. FTB's denial letter denies a refund of \$65,940 for the late filing penalty plus applicable interest.

Appellant also self-assessed a late filing penalty and interest totaling \$76,213, for a balance due of \$333,973. On January 19, 2023, appellant made a payment satisfying the liability.

2. Appellant filed a timely Reasonable Cause – Individual and Fiduciary Claim for Refund claiming a refund of the late filing penalty and interest totaling \$76,213.
3. On January 30, 2023, FTB issued a Notice of Tax Return Change – Refund, which reduced the interest to \$7,998.91 and granted a refund of \$2,274.09.
4. On May 15, 2023, FTB denied the remainder of appellant's claim for refund because appellant had not shown reasonable cause existed for the late filing, and that reasonable cause is not a basis for interest relief.
5. This timely appeal followed.
6. After the oral hearing, OTA held the record open for appellant to provide evidence regarding the length and extent of an asserted illness, which he asserts prevented the timely filing of his 2021 return.

DISCUSSION

Issue 1: Whether appellant has shown reasonable cause for filing an untimely return for the 2021 tax year.

California imposes a penalty for failing to file a tax return on or before the due date, unless the taxpayer shows that the failure is due to reasonable cause and not willful neglect. (R&TC, § 19131.) When respondent imposes a penalty, the law presumes the penalty was imposed correctly. (*Appeal of Xie*, 2018-OTA-076P.) Taxpayers may rebut this presumption by providing credible and competent evidence establishing reasonable cause. (*Ibid.*) Unsupported assertions are not enough to satisfy the taxpayers' burden of proof. (*Appeal of Mauritzson*, 2021-OTA-198P.)

Illness or other personal difficulties may be considered reasonable cause if the taxpayer presents credible and competent proof that they were continuously prevented from filing a tax return by those events. (*Appeal of Belcher*, 2021-OTA-0284P.) When a taxpayer alleges reasonable cause based on an incapacity due to illness, the duration of the incapacity must approximate that of the tax obligation deadline. (*Ibid.*) However, if the difficulties simply caused the taxpayer to sacrifice the timeliness of one aspect of the taxpayer's affairs to pursue other aspects, the taxpayer must bear the consequences of that choice. (*Ibid.*)

Here, appellant did not timely file a return for the 2021 tax year, which was due on or before April 15, 2022. As a result, FTB properly imposed the late filing penalty. However,

appellant asserts that the late filing penalty should be abated based on illnesses. In support, appellant provides a doctor's note stating that appellant was diagnosed with Shingles in December 2021 and on April 6, 2022, and COVID-19 during May 2022. As such, there is credible evidence that appellant suffered illnesses approximating the return's due date. OTA is sympathetic to appellant's hardship; however, appellant has not shown that the illnesses continuously prevented him from filing a timely return.

For example, appellant states that he continued to work through these illnesses. Even though appellant contends that he was not able to perform at work every day, he was not continuously prevented by his illness from working. Thus, it appears that appellant sacrificed the timeliness of his return to pursue other aspects of his affairs. (See *Appeal of Belcher, supra.*) Therefore, appellant has not met his burden of proof to establish reasonable cause.

Issue 2: Whether appellant is entitled to interest relief.

The imposition of interest is mandatory and cannot be waived based on reasonable cause. (R&TC, § 19101(a); *Appeal of Moy*, 2019-OTA-057P.) To obtain relief from interest, the taxpayer must qualify under the waiver provisions of R&TC section 19104 (pertaining to unreasonable error or delay by FTB in the performance of a ministerial or managerial act), R&TC section 19112 (pertaining to extreme financial hardship caused by significant disability or other catastrophic circumstance, or R&TC section 21012 (pertaining to reasonable reliance on the written advice of FTB).² Appellant does not allege, and the record does not reflect, that any of the above waiver provisions are applicable here. Therefore, appellant has not established a basis to abate interest.

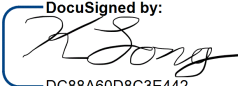
² OTA does not have jurisdiction to review FTB's interest abatement determination under R&TC section 19112. (*Appeal of Moy, supra.*)

HOLDINGS

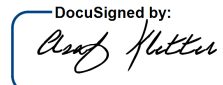
1. Appellant has not shown reasonable cause for filing an untimely return for the 2021 tax year.
2. Appellant is not entitled to interest relief.

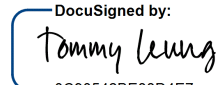
DISPOSITION

FTB's denial of appellant's claim for refund is sustained.

DocuSigned by:

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Keith T. Long
Administrative Law Judge

We concur:

DocuSigned by:

D17AEDDCAAB045B...
Asaf Kletter
Administrative Law Judge

DocuSigned by:

0C90542BE88D4E7...
Tommy Leung
Administrative Law Judge

Date Issued: 1/21/2025