

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 230613473  
J. SMART AND )  
C. SMART )  
\_\_\_\_\_ )

**OPINION**

Representing the Parties:

For Appellants: H. Daniel Lively, CPA / Attorney

For Respondent: Eric A. Yadao, Attorney

N. RALSTON, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. Smart and C. Smart (appellants) appeal an action by the Franchise Tax Board (respondent) denying appellants' claim for refund of \$35,422.27 for the 2020 tax year.

Appellants waived the right to an oral hearing; therefore, the matter was submitted to the Office of Tax Appeals (OTA) on the written record pursuant to California Code of Regulations, title 18, section 30209(a).

**ISSUE**

Whether appellants have shown reasonable cause to abate the late filing penalty for the 2020 tax year.

**FACTUAL FINDINGS**

1. Appellants untimely filed their 2020 joint tax return on November 15, 2021.
2. Subsequently, appellants filed an amended 2020 tax return on November 19, 2021, reporting a balance due.
3. Respondent issued Notices of Tax Return Change – Revised Balance (Notices) in response to each of appellants' returns. Each notice informed appellants that appellants had overstated their timely payments. The Notices also imposed a late filing penalty and statutory interest.

4. Appellants requested a waiver of the penalty on the basis that they originally attempted to make an extension payment of \$75,000 on May 17, 2021, which would have been timely. Appellants further stated that they reissued the payment when they became aware that the original payment had been dishonored.
5. Appellants subsequently paid their balance in full and filed a claim for refund. Respondent denied appellants' claim for refund and this timely appeal followed.

### 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 respondent 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.*)

Appellants argue that they have established reasonable cause to abate the late payment penalty because appellant J. Smart suffered from several bouts of an illness and thus was unable to timely file their return. Appellants assert that J. Smart controlled the couple's finances, including tax preparation and banking. Appellants contend that appellant C. Smart was unable to file their return because she was isolated from J. Smart due to J. Smart's illness. Appellants have failed to provide any documentary evidence beyond their mere assertions to show that C. Smart suffered from an illness and was thus, continuously prevented from filing appellants' tax return. Appellants have also failed to provide any evidence to corroborate their assertions that C. Smart was also prevented from filing their return. Therefore, appellants have failed to establish reasonable cause for the late filing of their 2020 return.

HOLDING

Appellants have not shown reasonable cause to abate the late filing penalty for the 2020 tax year.

DISPOSITION

Respondent's action denying appellants' claim for refund is sustained.

Signed by:

*Natasha Ralston*

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Natasha Ralston  
Administrative Law Judge

We concur:

DocuSigned by:

*Eddy Y. H. Lam*

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Eddy Y.H. Lam  
Administrative Law Judge

Signed by:

*Greg Turner*

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Greg Turner  
Administrative Law Judge

Date Issued: 3/6/2025