

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
S. MENDEZ) OTA Case No. 230713834
)
)
)
)
)

OPINION

Representing the Parties:

For Appellant: S. Mendez

For Respondent: Tristen Thalhuber, Attorney

For Office of Tax Appeals: Namrita Randhawa, Program Specialist

E. PARKER, Hearing Officer: Pursuant to Revenue and Taxation Code (R&TC) section 19324, S. Mendez (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$5,688.75 for the 2021 tax year.

Appellant 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 the late filing penalty may be abated for the 2021 tax year.

FACTUAL FINDINGS

1. On October 31, 2022, appellant remitted a payment for the 2021 tax year.
2. On November 4, 2022, appellant untimely filed a California Resident Income Tax Return for the 2021 tax year.
3. On November 21, 2022, FTB issued a Notice of Tax Return Change – Revised Balance, imposing a late filing penalty of \$5,688.75, plus interest.
4. Appellant paid the outstanding balance for the 2021 tax year.
5. In a letter dated January 3, 2023, appellant requested a waiver of the late filing penalty. Appellant explained that he attempted to electronically file the 2021 return on October 17, 2022, but it was rejected, requiring appellant to file a paper return.

6. FTB treated the letter as a claim for refund, which it denied.
7. Appellant filed this timely appeal.

DISCUSSION

R&TC section 19131 imposes a late filing penalty for the failure to file a return by the due date or the extended due date, unless the failure to file was due to reasonable cause and not due to willful neglect. 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 Head and Feliciano*, 2020-OTA-127P.) For an individual filer, like appellant, the 2021 return was originally due on April 15, 2022. (R&TC, § 18566.) California provides an automatic six-month extension of time to file a return if the return is filed within six months of the original due date.¹ (R&TC, § 18567.) The burden of proof is on the taxpayer to show that reasonable cause exists to support an abatement of the late filing penalty. (*Appeal of Xie*, 2018-OTA-076P.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Bannon*, 2023-OTA-096P.)

FTB imposed the late filing penalty because appellant did not file his 2021 return until November 4, 2022. On appeal, appellant asserts that he timely filed the return and requests an abatement of the late filing penalty. Specifically, appellant states that he electronically filed the 2021 return on October 17, 2022, but it was rejected by FTB. In support of appellant's argument, he provides an Intuit Electronic Filing Client Status History for Tax Year 2021. Appellant also provides a copy of IRS Form 9325 as proof that the federal return was filed and accepted by the IRS on October 17, 2022. Appellant contends that since the California electronic filing was not successful, he physically mailed the return "within the 10 days limit"² on October 25, 2022, but that he has since lost the USPS receipt to substantiate the October 25, 2022 mailing.

A return filed via U.S. mail is deemed filed as of the postmark date stamped on the envelope containing the return, or on the date it was mailed if there is satisfactory proof

¹ For the 2021 tax year, an individual's deadline to meet the six-month extension of time to file was Monday, October 17, 2022, because October 15, 2022, was a Saturday.

² Pursuant to IRS Publication 1345, when an electronically filed return is rejected, the taxpayer has 10 calendar days from the date the IRS notifies the taxpayer of the rejection to mail a paper return. According to FTB Publication 1345, section 4.1, "[t]he FTB follows the e-file Program requirements found in IRS Pub. 1345 and in IRS Revenue Procedure 2007-40, to the extent that they apply to FTB's e-file Program." FTB agrees that if appellant filed his return within 10 days of receiving notification that his electronic filing was rejected, which occurred on October 17, 2022, then the filing would have been timely.

establishing it was mailed on an earlier date. (Gov. Code, § 11003.) FTB’s records indicate the 2021 return was filed on November 4, 2022. OTA finds that appellant has not provided sufficient evidence, such as a certified mail receipt, to support his assertion that the tax return was mailed on October 25, 2022. While the electronic filing history report confirms appellant was notified on October 17, 2022, that the electronic return was rejected by FTB, there is no evidence in the record to support appellant’s contention that the return was mailed on October 25, 2022. Additionally, while IRS Form 9325 provides evidence that appellant filed his federal return on October 17, 2022, the form pertains solely to federal returns and does not substantiate an alleged filing of a California return. Therefore, OTA finds that appellant has failed to show he timely filed his 2021 California return.

Appellant also has not provided evidence establishing reasonable cause exists for failing to file his 2021 return by the extended due date. Importantly, appellant’s failure to maintain the records necessary to show the return was filed timely (e.g., the USPS receipt) indicates appellant did not act as an ordinarily intelligent and prudent businessperson would have acted under similar circumstances. A taxpayer must provide credible and competent evidence to support a claim of reasonable cause. (*Appeal of Xie, supra.*) OTA finds that appellant has not met the burden of proof to show that reasonable cause exists to abate the late filing penalty.

HOLDING

The late filing penalty may not be abated for the 2021 tax year.


DISPOSITION

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

DocuSigned by:

 6651E0AAC34B4F6...
 Erica Parker
 Hearing Officer

We concur:

DocuSigned by:

 67F043D83EF547C...
 Sheriene Anne Ridenour
 Administrative Law Judge

DocuSigned by:

 5DD7EF644397430...
 Steven Kim
 Administrative Law Judge

Date Issued: 3/6/2025