

In the Matter of the Appeal of: ) OTA Case No. 2408171157  
**G. MARX** )  
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1. Appellant did not file a 2019 California income tax return. FTB issued a Request for Tax Return (Request) to appellant that stated FTB received information that indicated appellant may have a California filing requirement for the 2019 tax year. Appellant did not respond to the Request.

2. FTB issued a Notice of Proposed Assessment (NPA) to appellant that estimated appellant's income, proposed tax of \$9,303, a late filing penalty of \$1,942.25, and interest of \$502.55, and allowed a withholding credit of \$1,534, for an amount due of \$10,213.81.<sup>1</sup> The NPA became due and payable when appellant did not file a timely protest.
3. On October 9, 2023, appellant untimely filed a 2019 California Resident Income Tax Return (Return) reporting a total tax of \$10,039, withholding credit of \$2,058, and a self-assessed estimated tax penalty of \$272.
4. FTB accepted appellant's Return and issued a Notice of Tax Return Change – Revised Balance (Notice) to revise the withholding credit to \$1,534, the late filing penalty to \$2,126.25, and the estimated tax penalty to \$269.
5. Appellant submitted a claim for refund of the penalties due to reasonable cause.
6. FTB denied the claim for refund.

#### 2021 Tax Year

7. On October 3, 2023, appellant untimely filed a 2021 Return reporting a total tax of \$6,280, withholding credit of \$4,101, and a tax due of \$2,179.
8. FTB accepted appellant's return and issued a Notice to impose a late filing penalty of \$544.75 and an estimated tax penalty of \$33, plus interest.
9. Appellant submitted a claim for refund of the penalties due to reasonable cause.
10. FTB denied the claim for refund.
11. Appellant filed a timely appeal for the 2019 and 2021 tax years.

### DISCUSSION

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

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 willful neglect. The due date for the 2019 Return was July 15, 2020,<sup>2</sup> and the original due date for the 2021 Return was April 15, 2022. (R&TC, § 18566.) The extended due dates for appellant's 2019 and 2021 Returns were October 15, 2020, and October 15, 2022, respectively. (R&TC, § 18567(a).) The burden of proof is on the taxpayer to show that reasonable cause

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<sup>1</sup> There is an immaterial rounding difference of \$.01.

<sup>2</sup> Due to the COVID-19 pandemic, FTB postponed the original due date to file a 2019 tax return from April 15, 2020, to July 15, 2020.

exists to support an abatement of the late filing penalty. (*Appeal of Xie*, 2018-OTA-076P.) 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 Belcher*, 2021-OTA-284P.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Bannon*, 2023-OTA-096P.)

Appellant does not dispute that he failed to timely file his Returns for the 2019 and 2021 tax years, nor does he contest the computation of the late filing penalties. Rather, appellant requests that the late filing penalties be abated based on reasonable cause because, due to his illness, "he was physically and mentally unable to file" his 2019 and 2021 Returns "until his full recovery in 2023."

In support of his position, appellant provides three letters from medical professionals. In the first letter, dated November 14, 2024, appellant's treating psychiatrist states that appellant was under his care since February 2007. The psychiatrist explains that while appellant's symptoms worsened from January 2020, to April 2020, and from August 2020, to October 2020, he is unable to assess the degree to which his psychiatric illness impacted his ability to file taxes in a timely way. In the second letter, dated July 16, 2024, a therapist states that appellant was admitted to a program in January 2021, and since August 2021, the therapist has continued to see appellant on a weekly outpatient basis. In the third letter, dated July 12, 2024, another therapist states that appellant was under his care during 2021 and 2022 and that appellant "was unable to work during this period and his condition was exacerbated by the isolation of the Covid-19 pandemic. His activities of daily living (ADLs) and his ability to concentrate and his executive functioning were impaired during this period." The therapist and psychiatrist both state they are unable to assess whether appellant was capable of filing tax returns.

On appeal, FTB contends that appellant engaged in tax and nontax matters during the periods at issue. As such, FTB argues that appellant was capable of timely filing his Returns and was not continuously prevented from filing. In support of its argument, FTB provides copies of call logs documenting that appellant called FTB on December 14, 2020, December 17, 2020, January 28, 2021, August 9, 2022, and March 23, 2023, to discuss installment agreements, web pay options, and online portal questions. FTB also provides documentation that appellant reported business income and expenses for the 2020 tax year and non-passive business losses for the 2022 tax year. Lastly, FTB provides an article announcing that appellant participated in a special fundraiser on July 25, 2021.

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 return. (*Appeal of Belcher, supra.*) 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.*) Mental illness or mental incapacity can constitute reasonable cause for failure to file timely returns. (*Ibid.*) However, the taxpayer must show that the "mental or emotional disorder . . . rendered the taxpayer incapable of exercising ordinary business care and prudence during the period in which the failure to file continued." (*Ibid.*)

Establishing reasonable cause due to a mental illness is a difficult burden to meet. For example, the U.S. Tax Court found reasonable cause in a case where the taxpayer was confined to hospitals for severe mental illness. (*Carnahan v. Commissioner*, T.C. Memo. 1994-163, *affd.* (D.C. Cir. 1995) 70 F. 3d. 637.) However, in another case where a taxpayer suffered from several serious mental disorders but was involved in the management of multiple rental properties, the U.S. Tax Court did not find reasonable cause because the taxpayer was able to "carry on normal activities." (*Leslie v. Commissioner*, T.C. Memo. 2016-171.) The tax court acknowledged the taxpayer may have had difficulty in carrying on normal activities but found she "was not so impaired as to be an inability." (*Ibid.*)

The record is clear that appellant has been under the care of multiple mental healthcare providers for many years. The letters from appellant's mental health providers specify (1) certain periods of time when appellant struggled to attend to "activities of daily living," (2) "he was unable to work," and (3) "his activities of daily living (ADLs) and his ability to concentrate and his executive functioning were impaired". However, the letters fail to show that appellant was continuously prevented from filing a tax return. Additionally, as illustrated in *Leslie v. Commissioner, supra*, mental health struggles alone do not establish an inability to exercise ordinary care and prudence if a taxpayer is able to engage in other "normal activities."

Importantly, the record shows that appellant did engage in tax activities during the relevant time period,<sup>3</sup> as evidenced by appellant's several phone calls to FTB to initiate an installment payment plan, his access to his online FTB account, and his payments to FTB. Appellant also engaged in nontax activities during the period that appellant was purportedly unable to attend to his filing obligations. Specifically, appellant earned business income,

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<sup>3</sup> July 15, 2020, through October 15, 2020, for the 2019 tax year, and April 15, 2022, through October 15, 2022, for the 2021 tax year.

incurred expenses, and engaged in non-passive business activities. Additionally, during this period, appellant participated in a special fundraiser that advertised he would “perform songs” and “engage in unique anecdotes” about his family.

When a taxpayer is able to exercise ordinary care and prudence with respect to nontax matters, the claimed mental illness or mental incapacity does not constitute reasonable cause. (*Appeal of Belcher, supra.*) Appellant’s ability to engage in tax and nontax activities, while failing to timely file his 2019 and 2021 Returns, does not demonstrate the exercise of ordinary business care and prudence. As such, appellant fails to establish reasonable cause to abate the late filing penalties.

Issue 2: Whether appellant is entitled to waiver of the estimated tax penalties.

R&TC section 19136 conforms to Internal Revenue Code (IRC) section 6654, with certain exceptions, and imposes an addition to tax, which is treated as a penalty, where a taxpayer fails to timely pay estimated tax. There is no provision in the IRC or R&TC that allows the estimated tax penalty to be abated solely on a finding of reasonable cause. (*Appeal of Johnson*, 2018-OTA-119P.) The estimated tax penalty, however, may be waived under two limited exceptions: (1) the underpayment of tax was due to “casualty, disaster, or other unusual circumstances” such that imposition of the penalty would be “against equity and good conscience”; or (2) the underpayment is due to reasonable cause and not willful neglect, if the taxpayer either retired after having attained age 62 or became disabled in the taxable year for which the estimated tax payments were required to be made or in the previous taxable year. (IRC, § 6654(e)(3)(A)-(B).) The phrase “casualty, disaster, or other unusual circumstances” generally refers to unexpected events that cause a hardship or loss. (*Appeal of Johnson, supra.*)


Appellant does not dispute the calculation of the estimated tax penalties. However, appellant contends the penalties should be abated based on the same reasonable cause arguments as those offered for the late filing penalties. As noted above, there is no general reasonable cause exception to the estimated tax penalty. (*Appeal of Johnson, supra.*) Appellant does not offer argument or evidence to support a statutory exception to the estimated tax penalties. As such, appellant is not entitled to waiver of the estimated tax penalties.

HOLDINGS

1. Appellant has not established reasonable cause to abate the late filing penalties.
2. Appellant is not entitled to waiver of the estimated tax penalties.

DISPOSITION

FTB's actions denying the claims for refund are sustained.

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Erica Parker  
Hearing Officer

Date Issued: 4/9/2025