

6. On August 2, 2022, after acquiring information that S. Bushnell had received income during the 2020 tax year, FTB requested a tax return from her, but received no response.
7. On November 4, 2022, the court appointed C. Engel (K. Bushnell's spouse) as appellant's legal representative.
8. On February 15, 2023, appellant late-filed its California tax return for the 2020 tax year.
9. On March 14, 2023, FTB assessed a late-filing penalty of \$28,409.50.
10. Appellant paid the late-filing penalty and filed a claim for refund of the penalty amount.
11. FTB denied appellant's claim for refund.
12. This timely appeal to OTA followed.
13. During the briefing period for this appeal before OTA, appellant submitted a letter from a licensed marriage and family therapist, who stated that K. Bushnell was her client from January 25, 2017, until February 18, 2022. According to the therapist, K. Bushnell was assigned the following diagnoses: severe alcohol use disorder (a.k.a., alcoholism) and depression. "As a result," wrote the therapist, "[he] experienced significant distress and impairment in social, occupational[,] and other important areas of daily functioning."
14. Appellant also included excerpts from K. Bushnell's 2020 and 2021 federal income tax returns (federal returns), which respectively reported gross income of \$18,879 and \$2,039 from a publishing business.

DISCUSSION

R&TC section 19131 imposes a late-filing penalty on taxpayers who fail 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. To establish reasonable cause, taxpayers must show that the failure to file a timely return occurred despite the exercise of ordinary business care and prudence, or that such 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.)

When FTB imposes a penalty, the law presumes that it did so correctly, and taxpayers bear the burden of proof to establish otherwise. (*Appeal of Xie*, 2018-OTA-076P.) To overcome the presumption of correctness attached to the penalty, taxpayers must provide credible and competent evidence supporting a claim of reasonable cause; otherwise, the penalty cannot be abated. (*Ibid.*)

Appellant does not dispute that it late-filed its 2020 tax return on February 15, 2023, or that FTB properly imposed the late-filing penalty. The parties also appear to agree that the primary delay in filing appellant's 2020 tax return occurred during K. Bushnell's administration of appellant, specifically the period from May 17, 2021 (the 2020 tax return's postponed due date), through May 20, 2022 (the date of K. Bushnell's passing, which left appellant without an administrator).

On appeal, appellant contends that it had reasonable cause for failing to file the 2020 tax return during this period of delay: K. Bushnell's declining mental health. According to appellant, for six months beginning in January 2017, K. Bushnell attended an intensive outpatient rehabilitation program for substance abuse. Appellant alleges that immediately after the program, K. Bushnell relapsed and subsequently struggled to manage his sobriety and mental health for many years. Per a letter from a marriage/family therapist, K. Bushnell was receiving treatment for alcoholism and depression, which significantly impaired him socially, occupationally, and in other important areas of daily functioning. According to appellant, in December 2021, K. Bushnell experienced a second relapse, which further exacerbated his inability to work and manage appellant, and his substance abuse issues continued until his passing in May 2022. As evidence of K. Bushnell's declining ability to participate in regular business activities, appellant provided excerpts from his filed 2020 and 2021 federal returns, which respectively reported gross income of \$18,899 and \$2,039. For the 2022 tax year, appellant claims that K. Bushnell's gross income decreased to \$0 and no federal return was filed.

Illness or other personal difficulties may be considered reasonable cause if taxpayers present credible and competent proof that they were continuously prevented from filing a tax return. (*Appeal of Head and Feliciano*, 2020-OTA-127P.) When taxpayers allege reasonable cause based on an incapacity due to illness, the duration of the incapacity must approximate that of the tax obligation deadline. (*Ibid.*) “[E]pisodic or intermittent periods of disability are not sufficient to excuse a late tax filing—the disability must have rendered the taxpayer effectively unable to meet the obligation during the overall period of time relevant to the filing obligation.” (*Stine v. U.S.* (Fed. Cl. 2012) 106 Fed.Cl. 586, 593.) However, if personal difficulties simply caused taxpayers to sacrifice the timeliness of one aspect of their affairs to pursue other aspects, taxpayers must bear the consequences of that choice. (*Appeal of Head and Feliciano*, *supra.*) Taxpayers' selective inability to perform tax obligations, while participating in regular business activities does not establish reasonable cause. (*Ibid.*)


Here, appellant has not established that K. Bushnell’s alcoholism and depression continuously prevented him from filing a 2020 tax return for appellant, whom he served as an administrator from October 30, 2020 (the date of S. Bushnell’s passing), through May 20, 2022 (the date of K. Bushnell’s passing). Rather, evidence in the record indicates that despite his personal difficulties, K. Bushnell earned income during both the 2020 and 2021 tax years. Moreover, he filed federal returns for himself for those same years, and nothing in the record suggests that these were late filed. Most significantly, after first relapsing in mid-2017, K. Bushnell appeared to have regained reasonable functions until a second relapse in December 2021, six months after the postponed filing deadline for appellant’s return. Given all the above, it appears K. Bushnell’s incapacity fluctuated and his periods of impairment were inconsistent. As such, his condition was not of a continuous nature, but one marked by “episodic or intermittent periods of disability,” and thus “not sufficient to excuse a late tax filing.” (*Stine v. U.S.*, *supra*, 106 Fed.Cl. at p. 593.) Accordingly, OTA concludes that appellant has not established reasonable cause for late filing its 2020 tax return.

HOLDING


Appellant has not established a basis to abate the late-filing penalty.

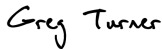
DISPOSITION

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

DocuSigned by:

8A4294817A67463...
Andrew Wong
Administrative Law Judge

We concur:

DocuSigned by:

07F043D68EF547C...
Sheriene Anne Ridenour
Administrative Law Judge

Signed by:

1B8E50433E1D4D5...
Greg Turner
Administrative Law Judge

Date Issued: 5/2/2025