

DISCUSSION

Issue 1: Should the late filing penalty be abated?

A late filing penalty shall be imposed when a taxpayer fails to file a tax return by either the due date or the extended due date, unless the taxpayer establishes that the late filing was due to reasonable cause and not due to willful neglect. (R&TC, § 19131(a).) The late filing penalty is calculated at five percent of the tax, for each month or a fraction thereof, that the return is late, with a maximum penalty of 25 percent of the tax. (*Ibid.*) When respondent imposes a penalty, the law presumes that the penalty was imposed correctly. (*Appeal of Xie*, 2018-OTA-076P.) The taxpayer bears the burden of proving that reasonable cause exists to support an abatement of the penalty. (*Ibid.*; *Appeal of Wright Capital Holdings LLC*, 2019-OTA-219P; *Appeal of Triple Crown Baseball LLC*, 2019-OTA-025P.) To establish reasonable cause, the taxpayer must show that the failure to file timely returns 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 Head and Feliciano*, 2020-OTA-127P.) Unsupported assertions are insufficient to satisfy the taxpayer's burden. (*Appeal of Wright Capital Holdings LLC*, *supra.*)

Appellants contend that they filed late due to family health and other personal difficulties, and work pressures related to the COVID-19 pandemic during 2020 and 2021. Appellants also assert they lost tax documents during their move to Washington and did not understand the tax computation of the sale of their California residence. In addition, appellants refer to their good filing and payment histories.

While appellants' circumstances were challenging, the record does not contain sufficient evidence to support a finding of reasonable cause. For example, there is no evidence of how these circumstances continuously prevented appellants from filing their 2020 tax return until November 18, 2021, or the steps taken by appellants to seek assistance for filing their 2020 tax return. Moreover, respondent postponed filing deadlines for individual taxpayers until May 17, 2021, in response to COVID-19.¹ Finally, sacrificing the timeliness of one aspect of a taxpayer's affairs (such as filing of the 2020 Form 540NR) to pursue other matters does not constitute reasonable cause. (See *Appeal of Belcher*, 2021-OTA-284P.) Thus, appellants have not satisfied their burden of proving reasonable cause. (*Appeal of Wright Capital Holdings LLC*, *supra.*)

¹ See <https://www.ftb.ca.gov/about-ftb/newsroom/2020-tax-year-extension-to-file-and-pay-individual.html>.

Issue 2: Should interest be abated?

The imposition of interest is mandatory and accrues on a tax deficiency regardless of the reason for the underpayment. (R&TC, § 19101(a); *Appeal of Balch*, 2018-OTA-159P.) There is no reasonable cause exception to the imposition of interest. (*Appeal of Moy*, 2019-OTA-057P.) Therefore, to obtain interest relief appellants must qualify under R&TC section 19104 (pertaining to unreasonable error or delay by respondent in the performance of a ministerial or managerial act), 19112 (pertaining to extreme financial hardship caused by significant disability or other catastrophic circumstance), or 21012 (pertaining to reasonable reliance on the written advice of respondent). (*Ibid.*)

Although appellants' circumstances might suggest financial difficulty, the Office of Tax Appeals lacks the authority to review respondent's denial of interest relief under R&TC section 19112; thus, this panel is unable to consider relief requests based on financial hardship. (*Appeal of Moy, supra.*) Furthermore, appellants do not allege, and the record does not reflect, that either R&TC sections 19104 or 21012 are applicable here. Therefore, there is no basis for abating interest.

HOLDINGS

1. Appellants have not established that there was reasonable cause for filing their 2020 tax return late and, therefore, the late filing penalty cannot be abated.
2. Interest cannot be abated.


DISPOSITION

Respondent's action is sustained.

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 Tommy Leung
 Administrative Law Judge

We concur:
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 Suzanne B. Brown
 Administrative Law Judge

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 Steven Kim
 Administrative Law Judge

Date Issued: 6/26/2025