

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: )  
**ESTATE OF I. OSTROWSKY** ) OTA Case No. 240616587  
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**OPINION**

Representing the Parties:

For Appellant: Gail N. Egan, Attorney

For Respondent: Arathi Ramalingam, Attorney

For Office of Tax Appeals: Lydia Zhu, Graduate Student Assistant

K. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, the Estate of I. Ostrowsky (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$14,189.25 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 appellant has established reasonable cause for the late filing of a 2021 California income tax return.

**FACTUAL FINDINGS**

1. On May 11, 2022, I. Ostrowsky passed away. I. Ostrowsky had not filed a timely California income tax return for the 2021 tax year prior to his death. A court appointed an estate administrator on September 1, 2022.
2. On March 26, 2024, FTB sent to appellant a Demand for Tax Return (Demand), requiring appellant to file a 2021 tax return, provide a copy of the tax return if filed, or explain why no tax return was required to be filed for the 2021 tax year.

3. Appellant filed I. Ostrowsky's tax return on March 28, 2024. On the tax return, appellant reported a tax liability of \$67,257, which after applying withholding of \$10,500, resulted in a balance due of \$56,757. Appellant made a payment of \$56,757 with the tax return, satisfying the tax liability.
4. FTB accepted the tax return as filed and imposed a late filing penalty of \$14,189.25, plus interest. FTB transferred \$21,593.92 from appellant's account for the 2020 tax year, satisfying the liability in full.
5. Appellant filed a timely claim for refund requesting abatement of the late filing penalty and interest.<sup>1</sup> On June 11, 2024, FTB denied appellant's claim for refund.
6. This appeal timely followed.

### DISCUSSION

An individual taxpayer who files on a calendar year basis must file a tax return by April 15th following the close of the calendar year. (R&TC, § 18566.) R&TC section 19131 requires FTB to impose a late filing penalty when the taxpayer fails to file a tax return on or before the due date, unless the taxpayer shows that the failure to file is due to reasonable cause and not willful neglect. The late filing penalty is calculated at 5 percent of the tax due, for each month or a fraction thereof, the tax return is not filed, with a maximum penalty amount of 25 percent of the tax. (R&TC, § 19131.) When FTB imposes a penalty, the law presumes that FTB properly imposed the penalty. (*Appeal of Xie*, 2018-OTA-076P).

FTB received appellant's 2021 tax return on March 28, 2024, well after the original due date of April 15, 2022. Therefore, FTB properly imposed a late filing penalty. Nevertheless, appellant asserts that reasonable cause exists for the failure to file a timely return. Appellant asserts that I. Ostrowsky passed away suddenly on May 11, 2022, before filing his tax return. Appellant argues that it took months to determine whether a return was filed, and that the administrator did not intentionally fail to file the tax return. Thus, appellant argues that the late filing penalty should be relieved.

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 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.) A taxpayer must provide credible and competent evidence supporting a claim of reasonable cause to

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<sup>1</sup> On appeal, appellant has not made any argument with respect to interest abatement. Thus, OTA finds that interest abatement is not at issue and will not discuss it further.

overcome the presumption of correctness attached to the penalty. (*Appeal of Xie, supra*). Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof. (*Appeal of GEF Operating, Inc., 2020-OTA-057P.*) Illness or other personal difficulties may be considered reasonable cause if the illness or personal difficulty continuously prevented the taxpayer from filing a return or paying the tax. (*Appeal of Head and Feliciano, supra.*) If, however, the difficulties simply caused the taxpayer to sacrifice the timeliness of one aspect of his or her affairs to pursue other aspects, the taxpayer must bear the consequences of that choice. (*Ibid.*)

Although I. Ostrowsky passed away on May 11, 2022, and was unable to file a tax return after that date, no explanation has been given for his failure to file a timely tax return on or before the due date of April 15, 2022. There is also no evidence that, prior to his death, I. Ostrowsky was continuously prevented from filing a return due to illness. OTA notes that the estate administrator was appointed on September 1, 2022, which is before the extended due date to file (October 15, 2022), but appellant has failed to provide any explanation or evidence of the estate administrator's attempts to discern whether appellant filed a return or to file a return in appellant's place.<sup>2</sup> In addition, the reasons given for the failure to timely file the return do not explain why the return was not filed until March 28, 2024, almost two years after the date that appellant passed away, and more than a year after the estate administrator was appointed. As such, reasonable cause for the failure to file a timely return has not been established.

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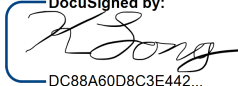
<sup>2</sup> OTA notes that appellant's estate administrator filed a power of attorney with the IRS on January 10, 2023, which was rejected due to a lack of information. However, OTA finds no evidence that appellant's estate administrator contacted FTB until after FTB's March 26, 2024 Demand.

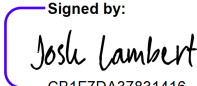
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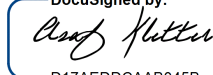
Appellant has not established reasonable cause for the late filing of a 2021 California income tax return.

DISPOSITION

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

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Keith T. Long  
Administrative Law Judge

We concur:  
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Josh Lambert  
Administrative Law Judge

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Asaf Kletter  
Administrative Law Judge

Date Issued: 6/19/2025