

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:	)	OTA Case No. 230513268
M. DELGADO	)	
	)	
	)	
	)	
	)	

OPINION

Representing the Parties:

For Appellant:	Jacqueline Rowe, Representative M. Delgado
For Respondent:	Brad Coutinho, Attorney Shah Khan, Representative

S. ELSOM, Hearing Officer: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. Delgado (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant's claim for refund of \$7,125.52¹ for the 2019 tax year.

Office of Tax Appeals (OTA) Panel Members Seth Elsom, Keith T. Long, and Steven Kim held a virtual oral hearing for this matter on March 19, 2025. At the conclusion of the hearing, the record was closed, and this matter was submitted for an opinion pursuant to California Code of Regulations, title 18, section 30209(b).

ISSUES

1. Whether appellant has established reasonable cause for the abatement of the late filing penalty.
2. Whether appellant has established a legal basis for the abatement of interest.

¹ Appellant's claim for refund is the sum of the late filing penalty of \$5,942.75, plus interest of \$1,182.77, which equals \$7,125.52.

FACTUAL FINDINGS

1. On April 14, 2021, appellant untimely filed his 2019 California income tax return, reporting total tax of \$31,477, withholdings of \$7,706, and tax due of \$23,771. Appellant did not remit payment with his return.
2. Respondent subsequently sent appellant a Notice of Tax Return Change – Revised Balance, imposing a late filing penalty of \$5,942.75, plus applicable interest, for a total balance due of \$30,686.38.² Appellant did not respond.
3. Appellant subsequently paid the balance due and filed FTB Form 2917, Reasonable Cause – Individual and Fiduciary Claim for Refund, claiming a refund of the late filing penalty and interest.
4. On April 17, 2023, respondent denied appellant's claim for refund stating that appellant had failed to show reasonable cause for the late filing of the return and that interest may not be abated based on reasonable cause.
5. This timely appeal followed.
6. At the oral hearing, appellant provided testimony that his original tax accountant had a stroke, the accountant's firm subsequently changed ownership, and the firm was unresponsive to appellant's requests to file his 2019 return. Appellant further testified that his "taxes are kind of complex . . ." and due to the limited availability of other preparers as a result of the COVID-19 pandemic, he was unable to find another preparer to file the return by the filing deadline.

DISCUSSION

Issue 1: Whether appellant has established reasonable cause for the abatement of the late filing penalty.

R&TC section 19131 imposes a late filing penalty on a taxpayer who fails 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. The late filing penalty is calculated at 5 percent of the tax for each month or fraction thereof that the return is late, with a maximum penalty of 25 percent of the tax. (R&TC, § 19131(a).) When respondent imposes a penalty, the law presumes that the penalty was imposed correctly. (*Appeal of Xie*, 2018–OTA–076P.) The burden of proof is on the taxpayer to show that reasonable cause exists to support an

² The Notice of Tax Return Change – Revised Balance reported appellant's balance for the 2019 tax year as the sum of appellant's reported tax due of \$23,771, plus the late filing penalty of \$5,942.75, plus interest of \$972.63, which equals \$30,686.38.

abatement of the penalty. (*Ibid.*) To overcome the presumption of correctness attached to the penalty, appellant must provide credible and competent evidence supporting a claim of reasonable cause; otherwise, the penalty cannot be abated. (*Ibid.*)

When a taxpayer alleges reasonable cause based on an incapacity due to illness or injury, the duration of the incapacity must approximate that of the tax obligation deadline. (*Appeal of Head and Feliciano*, 2020-OTA-127P; see also *Appeal of Triple Crown Baseball, LLC*, 2019-OTA-025P.)³ The taxpayer must present credible and competent proof that the circumstance of the illness or injury continuously prevented the taxpayer from complying with the law. (*Appeal of Triple Crown Baseball; supra; Appeal of Head and Feliciano, supra.*) 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. (*Appeal of Triple Crown Baseball, LLC, supra.*)

The parties agree that appellant did not timely file his 2019 return by the filing due date of July 15, 2020,⁴ and that respondent properly calculated and imposed the late filing penalty. However, appellant makes several reasonable cause type arguments for the abatement of the late filing penalty.

First, appellant asserts that he suffered an injury while employed as a firefighter, which caused him to be disabled in 2018. Appellant appears to assert that the injury contributed to his difficulty in timely filing his 2019 return, stating that he "is under [m]edical [c]are due to his injury on the job . . . and he is not able to work." Second, appellant asserts that he relied on an accountant to prepare and timely file his return. Appellant contends that the accountant had a stroke and became unresponsive to appellant. Appellant argues that during this time, he attempted to get help filing his return and called the accountant's firm "every day," but the firm had experienced a change in its ownership and was unresponsive. Due to the complexity of appellant's tax return and the limited availability of other tax preparers as a result of the COVID-19 pandemic, appellant asserts that he was unable to timely file the 2019 return.

³ The *Appeal of Triple Crown Baseball, LLC* determined whether the difficulties that a taxpayer experienced due to his injury met the reasonable cause standard for the abatement of the late payment penalty. Here, appellant asserts reasonable cause for the abatement of the *late filing penalty* due in part to the difficulties he experienced as a result of an injury. As both the late payment penalty and the late filing penalty apply the same reasonable cause standard for abatement, OTA's analysis in the *Appeal of Triple Crown Baseball, LLC* is applicable here.

⁴ In response to COVID-19, respondent postponed the due dates for returns, payments, and refund claims to July 15, 2020. (See <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2020-3-state-postpones-tax-deadlines-until-july-15-due-to-the-covid-19-pandemic.html>.)

As stated above, illness or injury may establish reasonable cause where the taxpayer presents credible and competent proof that the circumstance of the illness continuously prevented the taxpayer from complying with the law. (*Appeal of Triple Crown Baseball, LLC, supra*; *Appeal of Head and Feliciano, supra*.) Here, OTA finds appellant's witness's testimony regarding appellant's injury to be credible and acknowledges that appellant's circumstances may have been difficult. However, appellant has not provided any explanation as to whether the injury continuously prevented him from filing a return. Additionally, appellant does not provide evidence, such as medical records, doctor's affidavits, or any other information to prove or otherwise show that his injury prevented him from filing the 2019 return by the July 15, 2020 filing deadline, and until April 14, 2021, the date the 2019 return was filed. Thus, despite appellant's testimony, OTA finds that appellant has failed to show that his injury prevented him from timely filing a return.

With respect to appellant's second argument, appellant's request for appeal states that "[s]till healing from [the workplace] injury in early 2020, [appellant] brought all of his documents into the accountant that he always used." At the oral hearing, appellant testified that he called his original accountant somewhere around April 15, 2020, or April 17, 2020,⁵ to inquire about the status of the return, and when the accountant was unresponsive, appellant continued to contact other accounting firms in an attempt to timely file his return. However, when OTA asked appellant if he could provide phone records, text messages, or correspondence with his original tax preparer, and letters, emails and schedules of meetings with other tax preparers that he contacted to prove the extent of his efforts to timely file the 2019 return, appellant stated that he could not provide the documentary evidence requested. Furthermore, each taxpayer has a personal, non-delegable obligation to ensure the timely filing of a tax return, and thus, reliance on an agent to perform this act does not constitute reasonable cause to abate a late filing penalty. (See e.g., *Appeal of Fisher*, 2022-OTA-337P.) Therefore, appellant has not established that there is reasonable cause for the late filing of a return based on his reliance on a tax preparer.

For the foregoing reasons, appellant has not established reasonable cause to abate the late filing penalty.

⁵ At the hearing, Judge Kim requested clarification of the date that appellant discovered his return had not been filed, to which appellant testified, "I called them [the original accountant] on, I think it was like the 15th or the 17th . . ." In response to Judge Kim's subsequent question to clarify whether appellant had referred to April, appellant replied, "[y]es."

Issue 2: Whether appellant has established a legal basis for the abatement of interest.

Interest must be assessed from the date a tax payment is due through the date that it is paid. (R&TC, § 19101(a).) The imposing of interest is mandatory; it is not a penalty, but it is compensation for a taxpayer's use of money after it should have been paid to the state. (*Appeal of Moy*, 2019-OTA-057P.) There is no reasonable cause exception to the imposition of interest. (*Ibid.*) To obtain interest abatement, a taxpayer must qualify under the waiver provisions of R&TC section 19104 or 21012.⁶ R&TC section 19104 provides for interest abatement when the interest is attributable in whole or in part to any unreasonable error or delay by respondent when performing a ministerial or managerial act. R&TC section 21012 provides for interest abatement when the taxpayer reasonably relied on respondent's written advice.

Here, appellant does not argue that any exception to the imposition of interest applies. Appellant does not contend that there was any unreasonable error or delay by respondent, and there is no evidence that appellant obtained or reasonably relied on written advice from respondent. Therefore, appellant has not demonstrated any legal grounds for interest abatement.

⁶ R&TC section 19112 also allows respondent to abate interest, but that statute requires a taxpayer to demonstrate extreme financial hardship caused by a significant disability or other catastrophic circumstance. OTA does not have the legal authority to review or reverse respondent's denial of interest abatement based on extreme financial hardship. (See *Appeal of Moy*, *supra*.)

HOLDINGS

1. Appellant has not established reasonable cause for the abatement of the late filing penalty.
2. Appellant has not established a legal basis for the abatement of interest.

DISPOSITION

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

Signed by:

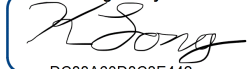


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Seth Elsom
Hearing Officer

We concur:

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Keith T. Long
Administrative Law Judge

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Steven Kim
Administrative Law Judge

Date Issued: 6/17/2025