

3. On July 11, 2022, appellant made a payment of \$435.89 for the 2019 late filing penalty plus applicable interest. On September 22, 2022, appellant made a payment of \$432 for the 2020 late filing penalty.
4. Appellant timely filed claims for refund of the late filing penalties plus applicable interest based on reasonable cause.
5. FTB denied appellant's claims for refund.
6. Appellant timely filed this appeal.
7. At the oral hearing, Mr. Heilmann was sworn in and provided testimony.

DISCUSSION

R&TC section 19172 imposes a late filing penalty when a partnership fails to file a return at the time prescribed unless it is shown that the failure was due to reasonable cause. The late filing penalty is computed at \$18 multiplied by the number of partners for each month that the return is late, up to a maximum of 12 months. (R&TC, § 19172(b).) When FTB imposes a penalty, the law presumes that the penalty was imposed correctly. (*Appeal of Xie*, 2018-OTA-076P.)

Appellant had two partners during the 2019 and 2020 tax years and late filed its returns for both years, more than 12 months past the original due dates. Therefore, FTB properly imposed the late filing penalties of \$432 ($\18×2 partners \times 12 months) for 2019 and 2020. Appellant does not dispute the amount of the penalties and only provides reasonable cause arguments.

The late filing penalty may be abated if it is established that the late filing was due to reasonable cause. (R&TC, § 19172(a).) Reasonable cause exists when a taxpayer acted as an ordinarily intelligent and prudent businessperson would have acted under similar circumstances. (*Appeal of Auburn Old Town Gallery, LLC*, 2019-OTA-319P.) In other words, the taxpayer must show that the failure to meet its tax filing obligation occurred despite the exercise of ordinary business care and prudence. (*Ibid.*) The failure to timely file a return is not excused by the taxpayer's reliance on an agent, and such reliance is not reasonable cause for a late filing. (*Ibid.*) One does not need to be a tax expert to know that tax returns have fixed filing dates and taxes must be paid when due. (*Ibid.*) A history of good filing is not a basis for abatement of the late filing penalty. (See *Appeal of Auburn Old Town Gallery, LLC, supra.*) Illness or other personal difficulties may be considered reasonable cause for late filing if the taxpayer presents credible and competent proof that it was continuously prevented from filing a tax return. (*Appeal of Head and Feliciano*, 2020-OTA-127P.) When a taxpayer alleges reasonable cause based on

an incapacity due to illness or the illness of an immediate family member, 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 its affairs to pursue other aspects, the taxpayer must bear the consequences of that choice. (*Ibid.*) The taxpayer's selective inability to perform tax obligations, while participating in regular business activities, does not establish reasonable cause. (*Ibid.*) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.)

On appeal, appellant states that one of its general partners (the general partner) was involved in an accident in 2008, and suffered from various injuries that have persisted to the present day and caused the general partner to have a permanent disability, which limited their ability to work. Appellant states that, although the accident was the fault of another party, the general partner was saddled with tens of thousands of dollars in medical debt without any financial compensation. At the oral hearing, Mr. Heilmann testified that he was responsible for completing the vast majority of business and household work, as well as providing assistance to the general partner with daily living. Mr. Heilmann stated that, appellant's business had declining revenue and that he was forced to seek outside employment to sustain living expenses. Mr. Heilmann testified that he had difficulty finding work and that he lived away from home during the week at the time the 2019 and 2020 return filings were due, causing him to incur additional rent and fuel expenses and to have no access to his personal computer or records. Mr. Heilmann stated that, during the weekends, he was consumed with catching up on household duties and continuing business activities for supplemental income to pay basic expenses and avoid mortgage foreclosure. Based on the foregoing, Mr. Heilmann argues that he acted like an ordinarily intelligent and prudent businessperson who was in jeopardy of losing his business and his home. Mr. Heilmann asserts that an ordinarily intelligent and prudent businessperson who had exhausted all reserves would focus all their energy on earning enough income through employment and business activities to save their home and business above all else and make every effort to get and maintain new employment.

Although Mr. Heilmann and the general partner were subject to personal difficulties, appellant has not established that it was continuously prevented from filing the tax returns at issue here. (See *Appeal of Head and Feliciano, supra.*) The difficulties caused Mr. Heilmann, and thus appellant, to sacrifice the timeliness of one aspect of its affairs (the timely filing of returns) to pursue other aspects (alternative employment), and appellant's selective inability to perform tax obligations while participating in regular business activities does not establish

reasonable cause. (*Ibid.*) While OTA appreciates the difficult circumstances that Mr. Heilmann and the general partner faced, reasonable cause is narrowly construed in the law and OTA is bound by such authority.

During the oral hearing, Mr. Heilmann further testified that appellant's long-time tax preparer retired, and he had to find another one to complete appellant's returns, but that appellant did not have funds to pay a tax preparer until late 2021. Mr. Heilmann also stated that, although the IRS imposed late filing penalties for 2019 and 2020, those penalties were abated due to reasonable cause, and that FTB should follow the federal determination.

However, appellant's reliance on its tax preparer to timely file returns does not constitute reasonable cause for a late filing. (See *Appeal of Auburn Old Town Gallery, LLC, supra.*) Additionally, FTB found that the IRS abatement of the late filing penalties for 2019 and 2020 was not due to reasonable cause because IRS documents did not indicate such a penalty reason code. FTB's determinations as to issues of fact are presumed to be correct, and the taxpayer bears the burden of proving otherwise. (*Appeal of Head and Feliciano, supra.*) Appellant has not established that the IRS abated the late filing penalties due to reasonable cause. Furthermore, even if the IRS abated the late filing penalties based on a showing of reasonable cause, FTB is not bound to follow a federal determination and may reach a different conclusion based on its own independent investigation. (See *Appeal of Black, 2023-OTA-023P.*)

Finally, appellant asserts that it has established reasonable cause for the late filings under IRS Revenue Procedure 84-35, 1984-1 C.B. 509 (Rev. Proc. 84-35).¹ In relevant part, Rev. Proc. 84-35 allows a domestic partnership consisting of 10 or fewer partners to be considered to have met the reasonable cause test if the partnership establishes that all of the partners have fully reported their shares of income, deductions, and credits of the partnership on their timely filed individual income tax returns. However, California does not conform to Rev. Proc. 84-35. (*Appeal of Auburn Old Town Gallery, LLC, supra.*) Moreover, appellant has not established that all of its partners have fully reported their shares of income, deductions, and credits of the partnership on their timely filed individual income tax returns. Accordingly, appellant cannot establish reasonable cause on this basis.

¹ Appellant also asserts that the facts of this appeal are similar to the facts of the *Appeal of Too Fun Designs, 2019-OTA-231*, in which OTA found reasonable cause to abate a late filing penalty based in part on Rev. Proc. 84-35. However, that appeal is non-precedential, and therefore not binding or authoritative.

HOLDING

Appellant has not established reasonable cause to abate the late filing penalties for the 2019 and 2020 tax years.

DISPOSITION

FTB's action is sustained.

DocuSigned by:
Steven Kim
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Steven Kim
Administrative Law Judge

We concur:

DocuSigned by:
Sheriene Anne Ridenour
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Sheriene Anne Ridenour
Administrative Law Judge

Signed by:
Greg Turner
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Greg Turner
Administrative Law Judge

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