

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 240917543
M. THEERATHADA AND)
D. THEERATHADA)
_____)

OPINION

Representing the Parties:

For Appellants: Vincent E. Aniwano, Representative
Priya Baskaran, Representative

For Respondent: Nancy E. Parker, Attorney

For Office of Tax Appeals: Evan Owens, Graduate Student Assistant

A. Kletter, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. Theerathada and D. Theerathada (appellants) appeal an action by the Franchise Tax Board (respondent) denying appellants' claim for refund of \$2,633.50 for the 2020 tax year.¹

Appellants waived the right to an oral hearing; therefore, the matter was submitted to the Office of Tax Appeals on the written record pursuant to California Code of Regulations, title 18, section 30209(a).

ISSUE

Whether appellants have established reasonable cause to abate the late filing penalty.

FACTUAL FINDINGS

1. On January 5, 2022, respondent received appellants' joint 2020 California Resident Income Tax Return (return).
2. Respondent processed the return and later issued a Notice of Tax Return Change – Revised Balance to appellants, which imposed a late filing penalty of \$2,633.50.

¹ The claim for refund consists solely of the late filing penalty.

3. Appellants paid the balance due and timely filed a claim for refund to abate the penalty.
4. On September 10, 2024, respondent issued a Claim for Refund Denied letter to appellants.
5. Appellants timely filed this appeal.

DISCUSSION

R&TC section 19131(a) 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. When respondent imposes a late filing penalty, it is presumed to have been correctly imposed, and the burden of proof is on taxpayers to show reasonable cause to abate the penalty. (*Appeal of Cremel and Koeppel*, 2021-OTA-222P.) To overcome the presumption of correctness, taxpayers must provide credible and competent evidence supporting a claim of reasonable cause. (*Ibid.*) To establish reasonable cause, taxpayers must show that the failure to timely file a return occurred despite the exercise of ordinary business care and prudence. (*Ibid.*)

Here, appellants' return for the 2020 tax year was due on May 17, 2021.² It is undisputed that appellants untimely filed their return on January 5, 2022. There is also no dispute as to the calculation of the penalty. Thus, the only issue on appeal is whether appellants have established reasonable cause for the late filing of their return.

On appeal, appellants assert that appellant M. Theerathada was unable to timely gather all the information required to file appellants' joint return despite her good faith efforts, that she owned a business that suffered closures and staffing shortages because of the COVID-19 pandemic in 2020, and that appellants have a history of timely filing their returns. However, difficulty in obtaining information does not constitute reasonable cause for the late filing of a return. (*Appeal of Xie*, 2018-OTA-076P.) Appellants do not explain what information was missing or why, but an asserted lack of documentation or difficulty in calculating a tax liability does not, by itself, constitute reasonable cause. (*Appeal of Red Vision Systems, Inc.*, 2023-OTA-561P.) Moreover, appellants have provided no information to establish that they exercised ordinary business care and prudence. The law makes it clear that the appropriate action at the filing deadline is to file a timely return with the information available at the time, and then file an amended return later if necessary. (*Appeal of Xie*, 2018-OTA-076P.)

² In response to COVID-19, pursuant to R&TC section 18572(b), respondent postponed the 2020 individual tax filing and payment due dates to May 17, 2021. (See <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2021-03-state-tax-deadline-for-individuals-postponed-until-may-17-2021.html>.)

Concerning appellant M. Theerathada's challenges with her business, 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.) However, if the difficulties simply caused taxpayers to sacrifice the timeliness of one aspect of their affairs to pursue other aspects, the taxpayers must bear the consequences of that choice. (*Ibid.*) Taxpayers' selective inability to perform tax obligations, while participating in regular business activities, does not establish reasonable cause. (*Ibid.*)

Appellant M. Theerathada does not assert incapacity, and appellants' claim for refund and opening brief claim that appellant M. Theerathada continued her dental practice during 2020. Appellants were able to timely file the return because appellant M. Theerathada was able to conduct other business affairs – continuing her dental practice. (See *Appeal of Head and Feliciano*, *supra.*) Appellants present no evidence that they were continuously prevented from filing a return until eight months after the due date because of the impacts of COVID-19 on appellant M. Theerathada's business. Instead, the difficulties caused appellant M. Theerathada to focus on one aspect of her affairs – her business – to the detriment of her timely tax filings, and appellants must bear the consequence of that choice. (See *ibid.*) Moreover, appellants provide no explanation or evidence to show that appellant D. Theerathada was unable to file the return. (See *ibid.*) Thus, appellants have not shown reasonable cause based on the challenges with appellant M. Theerathada's business.

Appellants also request reasonable cause abatement based on their good compliance history regarding filing their tax returns. However, while the IRS has a penalty abatement program called First Time Abate, neither the California Legislature nor respondent adopted a comparable penalty abatement program for the 2020 tax year at issue.³ Thus, no relief is available on this basis.

³ R&TC section 19132.5, effective for tax years beginning on or after January 1, 2022, allows a taxpayer to request a one-time abatement of a timeliness penalty. This provision is inapplicable to the 2020 tax year at issue.

HOLDING

Appellants have not established reasonable cause to abate the late filing penalty.

DISPOSITION

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

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Asaf Kletter
Administrative Law Judge

We concur:

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Andrew Wong
Administrative Law Judge

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L. Katrine Shelton
Administrative Law Judge

Date Issued: 2/4/2026