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3 **BOARD OF EQUALIZATION**
4 **STATE OF CALIFORNIA**
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6 In the Matter of the Appeal of:) **SUMMARY DECISION**
7) **PERSONAL INCOME TAX APPEAL**
8 **ROBERT L. CHASE, JR.**) Case No. 709616
9) Adopted: June 25, 2014
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11 Representing the Parties:

12 For Appellant: Ronald Seligman, CPA
13 For Franchise Tax Board: David Muradyan, Tax Counsel
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15 Counsel for the Board of Equalization: Josh Lambert, Tax Counsel
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17 This appeal is made pursuant to section 19324 of the Revenue and Taxation Code
18 (R&TC) from the action of respondent Franchise Tax Board (FTB) in denying appellant's claim for
19 refund of a late filing penalty of \$212, a demand penalty of \$6,212, and interest for tax year 2010. The
20 issues presented in this appeal are: (1) whether appellant has established reasonable cause for the
21 abatement of the late filing penalty; and (2) whether appellant has established reasonable cause for the
22 abatement of the notice and demand penalty (demand penalty).

23 FINDINGS AND DISCUSSION

24 Background

25 Appellant did not file a timely California tax return (Form 540) for the 2010 tax year.
26 The FTB received information through its annual Integrated Non-Filer Compliance program showing
27 that appellant earned income from different sources, including entities that reported Schedule K-1s,
28 sufficient to prompt a return-filing requirement. The FTB then initiated a filing enforcement action by

1 issuing a Demand for Tax Return on February 7, 2012, requiring appellant to respond either by filing a
2 2010 return or by explaining why a 2010 return was not required. When appellant failed to respond,
3 the FTB issued a Notice of Proposed Assessment (NPA) on April 9, 2012, based on appellant's
4 estimated taxable income of \$292,690.43, which proposed a total tax of \$25,662.00, an unpaid tax
5 liability of \$1,662.00, a late filing penalty of \$415.50, a demand penalty of \$6,415.50, and a filing
6 enforcement fee of \$88.00, plus interest. Appellant did not protest the NPA, and it became final after
7 the expiration of the 60-day protest period. The FTB then sent a Statement of Tax Due to appellant on
8 July 3, 2012.

9 Thereafter, appellant submitted an untimely 2010 Form 540 on August 6, 2012, and, as a
10 result, respondent reduced appellant's tax liability to \$24,848. Respondent sent an updated Statement
11 of Tax Due on August 14, 2012, and an Income Tax Due Notice on October 26, 2012, requesting the
12 payment for the balance due, which included a reduced late filing penalty of \$212, a reduced demand
13 penalty of \$6,212, a collection fee of \$88, and the unpaid tax liability of \$848, plus interest.

14 The FTB received correspondence from appellant requesting a waiver of the late filing
15 and demand penalties, explaining that the delays were due to his inability to timely acquire his
16 Schedule K-1s. Respondent inadvertently treated the correspondence as a claim for refund and sent
17 appellant a denial for a claim for refund.¹

18 This timely appeal followed.

19 Contentions

20 Appellant's Contentions

21 Appellant contends that: (1) the penalties are due to reasonable cause; (2) that he was
22 deeply depressed over the death of his mother; (3) that appellant's mother had been physically
23 handicapped since 1995 and was unable to take care of herself, such that appellant was her care
24 provider for many years; (4) the emotional trauma related to his mother's death caused him to ignore
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26 ¹ The FTB states that this error caused it to inadvertently grant appeal rights to appellant for the late filing and demand
27 penalties, but that appellant is not entitled to a refund because there is currently a deficit on appellant's 2010 tax year
28 account.

It appears from the record that appellant made an estimated tax payment of \$24,000 on January 15, 2011.

1 his financial affairs including his tax filing responsibilities for an extended period of time; (5) he made
2 a payment of \$24,000 toward his 2010 tax liability and then mistakenly did not report it on his return,
3 which shows that he was incapable of exercising reasonable care; (6) he has not been able to secure any
4 employment for years, as indicated on his 2007 through 2012 tax returns, which is evidence of personal
5 difficulties; (7) his inability to respond to the Demand for Tax Return and the NPA shows that he is
6 incapable of exercising reasonable care; and (8) the stock sales, taking place for two days out of the
7 year, represent a low level of investment activity and show that appellant did not have the ability to
8 consistently make prudent decisions.

9 Respondent's Contentions

10 The FTB contends that the late filing and demand penalties were imposed correctly
11 under R&TC sections 19131 and 19133, respectively, and that the penalties are presumed correct and
12 that the burden of proof is on appellant. The FTB goes on to state that, for the penalties to be abated,
13 appellant must provide credible and competent evidence to show the failure to timely file and/or
14 respond to the FTB's Demand for Tax Return was due to reasonable cause and not willful neglect, and
15 occurred despite the exercise of ordinary business care and prudence. The FTB states that appellant did
16 not submit any medical documentation to substantiate that his depression prevented him from filing or
17 responding to the demand letter. Furthermore, the FTB argues, appellant did not provide any specific
18 detail or evidence as to steps taken to timely file and/or respond to the Demand. The FTB contends that
19 appellant has not shown that he was prevented from filing or responding to the Demand, and was still
20 able to engage in various stock sales, as shown by his Wage and Income Transcript for 2010.

21 Additionally, the FTB asserts that the demand penalty was properly imposed pursuant to
22 California Code of Regulations, title 18, section (Regulation) 19133, subdivision (b), because appellant
23 failed to respond to a current demand for tax return and respondent proposed an assessment of tax
24 under the authority of R&TC section 19087, subdivision (a), after appellant failed to timely respond to
25 a Request for Tax Return or a Demand for Tax Return during the preceding four taxable years. The
26 FTB states that a Request for Tax Return for tax year 2007 was issued on May 11, 2010, and after
27 appellant failed to respond, an NPA was issued on July 19, 2010, thus satisfying the requirements of
28 Regulation 19133, subdivision (b).

1 Discussion

2 Late Filing Penalty

3 R&TC section 19131 provides that the FTB shall impose a late filing penalty when a
4 taxpayer fails to file a tax return on or before its due date, computed at five percent of the tax due, after
5 allowing for timely payments, for every month that the return is late, up to a maximum of 25 percent.
6 The penalty shall be imposed unless the taxpayer establishes that the late filing was due to reasonable
7 cause and not willful neglect. (Rev. & Tax. Code, § 19131.) When the FTB imposes a late filing
8 penalty, the law presumes that the penalty was imposed correctly. (*Todd v. McColgan* (1949)
9 89 Cal.App.2d 509.) The burden is on the taxpayer to establish reasonable cause for the untimely
10 filing. (*Appeal of M.B. and G.M. Scott*, 82-SBE-249, Oct. 14, 1982.)² For these purposes, reasonable
11 cause exists if it can be shown that the taxpayer acted as an ordinary intelligent and prudent
12 businessperson would have acted under similar circumstances. (*Appeal of Howard G. and Mary Tons*,
13 79-SBE-027, Jan. 9, 1979; *Appeal of Joseph W. and Elsie M. Cummings*, 60-SBE-040, Dec. 13, 1960;
14 *Appeal of J.B. Ferguson*, 58-SBE-024, Sept. 15, 1958.) A taxpayer must show that the failure to file
15 the return occurred despite the exercise of ordinary business care and prudence. (*Appeal of*
16 *Stephen C. Bieneman*, 82-SBE-148, July 26, 1982; *Appeal of Howard G. and Mary Tons, supra.*)

17 To satisfy the burden of proof, an appellant must provide credible and competent
18 evidence to support the claim of reasonable cause; otherwise, the penalty will not be abated.
19 Incomplete and unsupported statements are insufficient to carry this burden of proof. (*Appeal of*
20 *David A. and Barbara L. Beadling*, 77-SBE-021, Feb. 3, 1977; *Appeal of James C. and*
21 *Monablanché A. Walshe*, 75-SBE-073, Oct. 20, 1975.)

22 An appellant must demonstrate a relationship between the alleged hardship and the
23 failure to comply. (*Appeal of Michael J. and Diane M. Halaburka*, 85-SBE-025, Apr. 9, 1985; *Appeal*
24 *of Allen L. and Jacqueline M. Seaman*, 75-SBE-080, Dec. 16, 1975.) If personal difficulties simply
25 caused appellant to sacrifice the timeliness of one aspect of his affairs to pursue other aspects, the
26 appellant must bear the consequences of that choice. (*Appeal of William T. and Joy P. Orr*,
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² Board of Equalization cases (designated "SBE") may generally be found at: www.boe.ca.gov.

1 68-SBE-010, Feb. 5, 1968.) The selective inability to file tax returns while attending to other
2 responsibilities does not demonstrate reasonable cause. (*Watts v. Commissioner*, T.C. Memo
3 1999-416.) Each taxpayer has a personal and non-delegable obligation to file a tax return by the due
4 date. (*Appeal of Thomas K. and Gail G. Boehme*, 85-SBE-134, Nov. 6, 1985.) A taxpayer has an
5 unambiguous and precisely defined duty to timely file. (*United States v. Boyle* (1985) 469 U.S. 241.)

6 Appellant has failed to provide any evidence demonstrating how his hardships prevented
7 him from timely filing his 2010 return. Appellant has not shown that he was incapacitated and
8 continuously precluded from filing. (*Appeal of Michael J. and Diane M. Halaburka, supra.*) Appellant
9 presents unsupported arguments in attempts to establish reasonable cause, arguing that his
10 unemployment record, his mother's death, his low investment activity, and tax preparation mistakes all
11 show his failure to act as a prudent person. However, appellant presents no evidence of his personal
12 hardships, such as medical documentation, or of his efforts to timely file, despite demands for such
13 records from the FTB. Evidence must be presented which shows that appellant was, in fact, incapable
14 of filing a return in spite of his attempts. The FTB's determination cannot be successfully rebutted
15 when an appellant fails to present uncontradicted, credible, competent, and relevant evidence as to the
16 issues in dispute. (*Appeal of Oscar D. and Agatha E. Seltzer*, 80-SBE-154, Nov. 18, 1980.) Moreover,
17 appellant admits that he ignored his tax filing responsibilities, which constitutes willful neglect. Thus,
18 appellant has not demonstrated a relationship between his personal hardships and his inability to file his
19 return.

20 Appellant has presented no evidence that he exercised ordinary business care and
21 prudence and acted as an ordinary intelligent and prudent businessperson would have acted under
22 similar circumstances. Accordingly, we find that appellant failed to meet his burden of proof in
23 substantiating that reasonable cause exists for an abatement of the late filing penalty.

24 Demand Penalty

25 R&TC section 19133 provides that, if a taxpayer fails or refuses to make and file a
26 return upon receipt of a Demand for Tax Return from the FTB, then, unless the failure is due to
27 reasonable cause and not willful neglect, the FTB may add a penalty of 25 percent of the amount of tax

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1 determined pursuant to R&TC section 19087, subdivision (a).³ The FTB will impose a demand penalty
2 if the taxpayer fails to respond to a current Demand for Tax Return and the FTB issued an NPA under
3 the authority of R&TC section 19087, subdivision (a), if the taxpayer failed to timely respond to a
4 Request for Tax Return or a Demand for Tax Return at any time during the preceding four taxable
5 years. (Cal. Code Regs., tit. 18, § 19133, subd. (b).) Here, the FTB satisfied the regulatory prerequisite
6 because it previously issued a Request for Tax Return on May 11, 2010, for tax year 2007, and issued
7 an NPA for 2007 on July 19, 2010.

8 When the FTB imposes a demand penalty, the burden of proof is on the taxpayer to
9 show that reasonable cause exists to support an abatement of the penalty. (*Appeal of*
10 *Eugene C. Findley*, 86-SBE-091, May 6, 1986.) To establish reasonable cause, a taxpayer must show
11 that the failure to reply to the Demand for Tax Return occurred despite the exercise of ordinary
12 business care and prudence. (*Appeal of Stephen C. Bieneman, supra.*) The taxpayer's reason for
13 failing to respond to the Demand for Tax Return must be such that an ordinary intelligent and prudent
14 businessperson would have acted similarly under the circumstances. (*Appeal of Eugene C. Findley,*
15 *supra.*) If a taxpayer's return is not filed within the time specified in the Demand for Tax Return, the
16 penalty should be sustained. (*Appeal of Irma E. Bazan*, 82-SBE-259, Nov. 17, 1982.)

17 Here, appellant failed to respond to the FTB's Demand for Tax Return. He did not
18 contact the FTB to explain his situation or request more time to comply with the Demand for Tax
19 Return, and there is no evidence that he took any steps to respond to the Demand. Furthermore,
20 appellant argues that he had personal difficulties and depression over the loss of his mother. Appellant
21 has not presented any evidence of these personal hardships or of his attempts to respond to the FTB's
22 Demand in spite of those hardships. Appellant has not presented any evidence that he was
23 incapacitated and continuously precluded from responding. An ordinary intelligent and prudent
24 businessperson in appellant's situation would have responded to the FTB's Demand. Thus, appellant
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26 ³ R&TC section 19087, subdivision (a), provides:

27 "(a) If any taxpayer fails to file a return, or files a false or fraudulent return with intent to evade the tax, for any taxable year,
28 the Franchise Tax Board, at any time, may require a return or an amended return under penalties of perjury or may make an
estimate of the net income, from any available information, and may propose to assess the amount of tax, interest, and
penalties due. All the provisions of this part relative to delinquent taxes shall be applicable to the tax, interest, and penalties
computed hereunder."

1 has not provided any evidence to establish reasonable cause for an abatement of the demand penalty.

2 CONCLUSION

3 For the foregoing reasons, the FTB's action is sustained.

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