

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of:  
**A. RHOADS**

) OTA Case No. 19034481  
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**OPINION**

Representing the Parties:

For Appellant: Eric Koehle, Representative

For Respondent: Meghan McEvilly, Tax Counsel III

E. S. EWING, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, appellant A. Rhoads appeals an action by respondent Franchise Tax Board (FTB) denying her claim for refund of \$4,458.64 for the 2017 taxable year.

Appellant waived her right to an oral hearing and therefore we decide this matter based on the written record.

**ISSUE**

Has appellant demonstrated reasonable cause for failing to timely pay her 2017 tax liability?

**FACTUAL FINDINGS**

1. Appellant is a California resident who filed a timely 2017 tax return on extension.
2. Appellant’s return reported \$482,124 in tax, withholding of \$265,358, estimated tax payments of \$161,033, and a balance due of \$55,733.
3. After receiving her return, FTB sent appellant a Notice of State Income Tax Due reflecting a balance due of \$63,003.63, which appellant paid (following some adjustments by FTB).

4. Because appellant had not paid her tax liability in full by the due date, FTB assessed penalties of \$5,808.64, comprised of an underpayment of estimated tax penalty of \$1,350 and a late payment penalty of \$4,458.64.
5. Appellant then filed a claim for refund, requesting that FTB abate only the late payment penalty (and not the underpayment of estimated tax penalty) based upon reasonable cause.
6. FTB denied appellant's claim to abate the late payment penalty,<sup>1</sup> finding that appellant had not met her burden of proof of establishing reasonable cause for her late payment of tax.
7. Appellant then timely filed this appeal.

### DISCUSSION

R&TC section 19001 provides that the personal income tax “shall be paid at the time and place fixed for filing the return (determined without regard to any extension of time for filing the return).” R&TC section 19132 provides that a late payment penalty shall be imposed when a taxpayer fails to pay the amount shown as due on the return on or before the due date of the return. The late payment penalty has two parts. The first part is 5 percent of the unpaid tax. (R&TC, § 19132(a)(2)(A).) The second part is a penalty of 0.5 percent per month, or portion of a month (not to exceed 40 months), calculated on the outstanding balance. (R&TC, § 19132(a)(2)(B).) Here it is undisputed that appellant failed to timely pay tax, and appellant does not dispute the computation of the late payment penalty. Instead, appellant asserts that the penalty should be abated due to reasonable cause.

The late payment penalty may be abated if a taxpayer shows that the failure to make a timely payment of tax was due to reasonable cause and not due to willful neglect. (R&TC, § 19132(a).) To establish reasonable cause for a late payment of tax, a taxpayer must show that his or her failure to make a timely payment of the proper amount of tax occurred despite the exercise of ordinary business care and prudence. (*Appeal of Curry* (86-SBE-048) 1986 WL 22783.) The taxpayer bears the burden of proving that reasonable cause existed. (*Appeal of Sleight* (83-SBE-244) 1983 WL 15615.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Magidow* (82-SBE-274) 1982 WL 11930.)

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<sup>1</sup> We note that FTB's letter denying the claim for refund discusses both the underpayment of estimated tax penalty and the late payment penalty, but FTB on appeal correctly addresses just the latter penalty.

It is undisputed that the late payment penalty at issue in this appeal is the result of appellant receiving stock option exercise income during the 2017 taxable year for which tax was not timely paid for the 2017 taxable year. This resulted in FTB assessing the late payment penalty (among other amounts assessed which are not at issue in this appeal). Appellant does not disagree that the payment was late and the late payment penalty was properly calculated, but rather argues that the penalty should be abated due to reasonable cause.

Regarding reasonable cause, appellant asserts that, at the time she exercised the stock options, her employer withheld tax on the associated income from the exercises. Appellant asserts that her employer then issued an incorrect original Form W-2 for the 2017 taxable year which reported neither the stock option exercise income nor the related amount of tax withheld. Appellant states she notified her employer of the error in the Form W-2 and her employer issued a corrected Form W-2 reflecting the income from the exercise of the stock options but not the allegedly withheld amounts relating thereto. Appellant further asserts that her employer did not ultimately remit the tax allegedly withheld from the exercise of the stock options to the Employment Development Department and instead refunded the withheld taxes to her. Finally, appellant asserts that by the time the corrected Form W-2 was sent to appellant and the withholding refunded to her, the payment had already been made without including the tax related to the stock options exercise and the payment deadline had already passed.<sup>2</sup>

Appellant asserts that this chain of events shows reasonable cause to abate the late payment penalty. However, appellant has not provided, neither at FTB audit nor on appeal, any documentary substantiation that any tax amount related to the stock options exercise was in fact withheld (either at the time of the stock option exercises or at a later point). Further, while appellant asserts that the allegedly withheld amounts were refunded to her, there is nothing in the record to substantiate that assertion.

We do note that at the time the payment was due, appellant was in possession of only the original Form W-2, which she asserts incorrectly showed no tax withholding related to the stock options exercise. The record shows that the best information available to appellant at the time the payment was due was that any withholding related to the stock options exercise was not reflected in the original Form W-2 and a subsequent Form W-2 had not yet been issued. Even

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<sup>2</sup> The record shows that the payment of tax related to the stock option exercises was paid late – i.e., in October of 2018.

when the subsequent Form W-2 was issued, it showed no such withholding. Under these circumstances, and lacking any evidence in the record to the contrary, a taxpayer exercising ordinary business care and prudence would have timely paid in the tax to cover the exercise of the stock options. (See *Appeal of Curry, supra.*) We therefore find that appellant has not met her burden of proving reasonable cause to abate the late payment penalty.

HOLDING

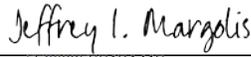
Appellant has not demonstrated reasonable cause for failing to timely pay her 2017 tax liability.

DISPOSITION

FTB’s action is sustained.

DocuSigned by:  
  
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Elliott Scott Ewing  
Administrative Law Judge

We concur:

DocuSigned by:  
  
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Jeffrey I. Margolis  
Administrative Law Judge

DocuSigned by:  
  
873D8797B9EB4E1...  
John O. Johnson  
Administrative Law Judge

Date issued: 3/9/2020