

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 19075098
S. HUBBARD AND)
K. HUBBARD)
_____)

OPINION

Representing the Parties:

For Appellants: Ryan Enriquez
Tax Appeals Assistance Program

For Respondent: Leoangelo C. Cristobal, Tax Counsel

E. S. EWING, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, S. Hubbard and K. Hubbard (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$533.01, plus applicable interest, for the 2018 tax year. Appellants waived their right to an oral hearing; therefore, the matter is being decided based on the written record.

ISSUE

Have appellants shown reasonable cause to abate the late-payment penalty imposed under R&TC section 19132?

FACTUAL FINDINGS

1. Appellants’ tax payment for the 2018 tax year was due on April 15, 2019, but FTB did not receive payment until May 3, 2019, which was 18 days late.
2. FTB imposed a late-payment penalty in the amount of \$533.01.
3. Appellants paid the penalty and timely filed a claim for refund in the amount of \$533.01, asserting there was reasonable cause to abate the penalty.
4. FTB issued a Notice of Action, denying the claim for refund.
5. This timely appeal followed.

DISCUSSION

The late-payment penalty may be abated if the taxpayer shows that the failure to make a timely payment of tax was due to reasonable cause and not due to willful neglect.¹ (R&TC, § 19132(a).) To establish reasonable cause for the late payment of tax, the taxpayer must show that the failure to make a timely payment of the proper amount of tax occurred despite the exercise of ordinary business care and prudence. (*Appeal of Sleight* (83-SBE-244) 1983 WL 15615.) The taxpayer bears the burden of proving reasonable cause exists. (*Ibid.*) The failure to timely remit the balance due on a tax liability caused by an oversight does not, by itself, constitute reasonable cause. (*Appeal of Friedman*, 2018-OTA-077P.)

Here, appellants contend they have demonstrated reasonable cause to abate the late-payment penalty because, around the time of the late payment, appellant-husband lost his job of 38 years, they were undergoing family health problems, and they were experiencing financial hardship. However, the late-payment penalty can only be abated if the taxpayer shows that, despite the exercise of ordinary business care and prudence, he or she could not timely pay the tax that is owed due to reasonable cause. While we are sympathetic to appellants' circumstances at that time, there is no evidence that this standard is met here. There is no evidence in the record that appellant-husband was experiencing health problems himself, or that he was financially unable to pay the taxes on time, as evidenced by the fact that appellants were able to withdraw funds from their retirement account and pay the taxes 18 days late. In short, we do not have a basis in law to reverse FTB's imposition of the penalty.

¹ Here, it is undisputed that FTB properly imposed and computed the late-payment penalty. In addition, FTB does not assert willful neglect is present in this case, and therefore the only issue is whether appellants have demonstrated reasonable cause for the late payment.

HOLDING

Appellants have not shown reasonable cause to abate the late-payment penalty imposed under R&TC section 19132.

DISPOSITION

FTB’s action is sustained.

DocuSigned by:
Elliott Scott Ewing
Elliott Scott Ewing
Administrative Law Judge

We concur:

DocuSigned by:
Sara A. Hosey
Sara A. Hosey
Administrative Law Judge

DocuSigned by:
Kenneth Gast
Kenneth Gast
Administrative Law Judge

Date Issued: 4/22/2020