

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

In the Matter of the Appeal of: ) OTA Case No. 19125528  
C. LEROY )  
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**OPINION**

Representing the Parties:

For Appellant: Arnold Kaufman, CPA

For Respondent: Eric A. Yadao, Tax Counsel III

H. LE, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, C. Leroy (appellant) appeals an action by Franchise Tax Board (respondent) denying appellant’s claim for refund of \$1,888.54 for the 2018 tax year.

Appellant waived the right to an oral hearing; therefore, we decide the matter based on the written record.

**ISSUE**

Whether appellant has shown that the late payment of tax was due to reasonable cause pursuant to R&TC section 19132.

**FACTUAL FINDINGS**

1. Appellant filed a 2018 tax return on March 11, 2019, showing a balance due of \$34,337.
2. Appellant attempted to make a \$34,337 late payment on April 18, 2019, using respondent’s Web Pay system. This payment was unsuccessful due to an incorrect account number.
3. Appellant successfully paid \$34,337 on May 1, 2019, using the Web Pay system.
4. The following month, respondent issued a Notice of State Income Tax Due, advising appellant of a balance due of \$1,978.25, which consisted of a late payment penalty of \$1,888.54 and interest of \$89.71. In this same month, appellant paid the balance due.

5. Appellant subsequently submitted a timely refund claim to abate the late payment penalty due to reasonable cause.
6. Respondent denied the claim on September 24, 2019. This timely appeal followed.

### DISCUSSION

R&TC section 19132 imposes a late payment penalty when a taxpayer fails to pay the amount shown as due on the return by the date prescribed for the payment of the tax. Generally, the date prescribed for the payment of the tax is the due date of the return (without regard to extensions of time for filing). (R&TC, § 19001.) Here, respondent properly imposed the late payment penalty because the payment due date was April 15, 2019, and appellant did not satisfy the 2018 tax liability until May 1, 2019. Appellant does not dispute the computation of the penalty, but rather contends it should be abated due to reasonable cause and a lack of willful neglect. (See R&TC, § 19132(a)(1).)

To establish reasonable cause for the late payment of tax, a 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 Scanlon*, 2018-OTA-075P.) The taxpayer bears the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Appeal of Scott* (83-SBE-094) 1983 WL 15480.) 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.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Magidow* (82-SBE-274) 1982 WL 11930.)

Here, appellant alleges an unsuccessful attempt to pay the 2018 tax liability was made on the payment due date of April 15, 2019, but appellant has not provided supporting documentation (e.g., a Web Pay confirmation page) to prove such allegation. In fact, respondent submitted a Payment View report and a Payment List, both of which reflect the absence of an attempted payment on April 15, 2019. Although the record shows appellant attempted payment on April 18, 2019, appellant has not shown reasonable cause through an attempted payment by the April 15, 2019 payment due date. Even if the April 18, 2019 payment had been successfully transmitted, appellant's payment would still have been untimely and subject to the late payment penalty in the same amount at issue in this appeal.

Appellant also asserts his age and lack of familiarity with “doing anything electronically”

serve as a basis for reasonable cause. However, appellant has not established how this prevented him from complying with the law because he has had an electronic payment requirement since 2010 and has made seven successful electronic payments since then. Appellant further asserts his financial consultant provided the incorrect account number but has not provided documentation to support this assertion. Regardless, appellant's responsibility to timely pay taxes generally cannot be excused by a mistake of an agent. (See *United States v. Boyle* (1985) 469 U.S. 241, 249.) Accordingly, appellant has not shown that the late payment of tax was due to reasonable cause.

HOLDING

Appellant has failed to show reasonable cause to abate the late payment penalty imposed under R&TC section 19132.

DISPOSITION

Respondent’s action in denying appellant’s claim for refund is sustained.

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Huy "Mike" Le  
Administrative Law Judge

We concur:

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Keith T. Long  
Administrative Law Judge

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Sheriène Anne Ridenour  
Administrative Law Judge

Date Issued: 8/18/2020