

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
A. POURABBAS

) OTA Case No. 21037486
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OPINION

Representing the Parties:

For Appellant: Haley Ritter, Tax Appeals Assistance Program (TAAP)¹
For Respondent: Joel Smith, Tax Counsel III

E. S. EWING, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, A. Pourabbas (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$1,781.33 for the 2019 taxable year.

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

ISSUE

Whether the late-payment penalty should be abated due to reasonable cause.

FACTUAL FINDINGS

1. Appellant timely filed a 2019 taxable year return. Appellant did not remit payment for the amount due with the return.
2. Respondent issued appellant an Income Tax Due Notice which, in addition to requesting payment of the balance of tax and interest due, assessed a late-payment penalty in the amount of \$1,781.33.
3. Appellant paid the full balance due for the 2019 tax year, including the late-payment penalty.

¹ Appellant filed the opening brief and Hayden Hargrove of TAAP filed appellant’s reply brief.

4. Appellant filed a claim for refund of the late-payment penalty and associated interest. Respondent denied the claim.
5. Appellant filed this timely 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. However, the 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).) The taxpayer bears the burden of proving the existence of both conditions. (*Appeal of Friedman*, 2018-OTA-077P.)

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, and unsupported assertions are not sufficient to satisfy a taxpayer’s burden of proof. (*Appeal of Scanlon*, 2018-OTA-075P.) A taxpayer’s inability to pay based on a financial hardship may be considered reasonable cause if the taxpayer can establish a hardship existed. (*Appeal of Triple Crown Baseball, LLC*, 2019-OTA-025P.) With regard to the federal late-payment penalty, which is substantially similar to R&TC section 19132, the Treasury Regulations provide that the hardship must be more than an inconvenience to the taxpayer and appear to result in substantial financial loss. (See Treas. Reg. § 301.6651-1(c) incorporating Treas. Reg. § 1.616-1(b).)

Here, it is undisputed that appellant failed to timely pay the tax and therefore the late-payment penalty was properly imposed. Nevertheless, appellant seeks abatement of the late-payment penalty due to reasonable cause. Appellant explains that he became unemployed in April 2020, at the beginning of the Covid-19 pandemic, and remained unemployed at least until the time he filed this appeal. Appellant paid the total balance due of \$26,031.23 on December 7, 2020, approximately eight months following appellant’s unemployment.² The fact that appellant paid the balance in full eight months after becoming unemployed weighs against a

² Appellant asserts he borrowed money from a family member to pay his taxes. However, appellant has provided no evidence to support this assertion.

finding that paying the amount due would result, or did result, in substantial financial loss as required by Treasury Regulation sections 301.6651-1(c) and 1.6161-1(b) if paid when due on April 15, 2020. Appellant provides no other evidence to establish that paying the tax due would result, or did result, in substantial financial loss. While we understand appellant’s situation at the time, here we find that appellant’s difficulties due to his unemployment do not establish reasonable cause to abate the penalty.

Finally, appellant asserts that he has always paid his taxes on time. We note that the IRS administers a program called “First Time Abate” through which the IRS abates first-time timeliness penalties if a taxpayer has timely filed returns and paid taxes due for the preceding three years. However, respondent has no such program and, as previously stated, California law allows abatement of a late-payment penalty only on a showing of reasonable cause.

HOLDING

The late-payment penalty should not be abated due to reasonable cause.

DISPOSITION

Respondent’s action is sustained.

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Elliott Scott Ewing
Administrative Law Judge

We concur:

DocuSigned by:

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Keith T. Long
Administrative Law Judge

DocuSigned by:

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Daniel K. Cho
Administrative Law Judge

Date Issued: 11/15/2021