

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

In the Matter of the Appeal of:  
**S. MORETTI**

) OTA Case No. 21057867  
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**OPINION**

Representing the Parties:

For Appellant:

S. Moretti

For Respondent:

Kristina Pehur, Graduate Student Assistant

A. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, S. Moretti (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$695.67 for the 2016 tax year.

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

**ISSUE**

Whether appellant has established reasonable cause to abate the late payment penalty.

**FACTUAL FINDINGS**

1. Appellant timely filed a 2016 return. Appellant reported a tax liability but did not pay the reported tax due by the April 15, 2017 due date.
2. Respondent sent a Notice of State Income Tax Due, which notified appellant of his outstanding tax liability and the imposition of the late payment penalty and accrued interest.
3. Appellant contacted respondent to set up an installment agreement to satisfy the outstanding liability.

4. Appellant subsequently filed an amended 2016 tax return reporting an increased federal adjusted gross income by \$29,598, thereby increasing his taxable income. This resulted in respondent increasing, among others, appellant's late payment penalty to \$695.67.
5. After making his final payment, appellant filed a claim for refund to abate the late payment penalty. Respondent denied the claim.
6. This timely appeal followed.

#### DISCUSSION

R&TC section 19132 provides that a late payment penalty is 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 may be abated if the taxpayer establishes that the failure to make a timely tax payment was due to reasonable cause and was not due to willful neglect. (R&TC, § 19132(a)(1).)

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 occurred despite the exercise of ordinary business care and prudence. (*Triple Crown Baseball LLC*, 2019-OTA-025P.) While illness or other personal difficulties may constitute reasonable cause, taxpayers must present competent and credible proof that the circumstances surrounding the illness prevented the taxpayer from complying with the law. (*Ibid.*) Additionally, inability to pay the tax due to financial hardship may also establish reasonable cause to abate the late payment penalty. (*Ibid.*) However, if the difficulties simply cause the taxpayer to sacrifice the timeliness of one aspect of the taxpayer's affairs to pursue other aspects, the taxpayer must bear the consequences of that choice. (*Ibid.*)

Appellant contends that his former employer incorrectly reported his income to be \$30,000 more than what he made in 2016.<sup>1</sup> To rectify the situation, appellant states he hired a tax attorney, who advised him to set up an installment plan with respondent, but appellant did not realize that this would result in a penalty and interest. Appellant also recounts events spanning

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<sup>1</sup> The administrative record shows the contrary: appellant filed amended California and federal returns to increase his taxable income by \$29,598. The IRS then waived appellant's federal late payment penalty based on appellant's history of timely filing and timely payments. State of California has not adopted a comparable penalty abatement program. (*Appeal of Xie*, 2018-OTA-076P.)

from September 2017 through 2021 relating to personal and family illnesses, and financial hardship.<sup>2</sup>

We are sympathetic to appellant’s situation. However, we are bound to decide the appeal according to the law, and the law requires appellant to demonstrate not only personal hardship, but also the inability to timely pay taxes by April 15, 2017, despite the exercise of ordinary business care and prudence. (*Appeal of Triple Crown LLC, supra.*) Appellant’s stated hardships occurred after the payment deadline and as such, do not explain why appellant failed to make a timely payment by April 15, 2017. Moreover, ignorance of the law is not reasonable cause for failing to comply with tax payment deadlines. (*Appeal of Porreca, 2018-OTA-095P.*) As such, appellant’s unfamiliarity with the law that the late payment penalty would be imposed if taxes are not paid timely is not reasonable cause to abate the late payment penalty.

California law also does not provide a basis to abate the late payment penalty based on the taxpayer’s history of timely tax payments. Accordingly, appellant has not established reasonable cause to abate the late payment penalty.

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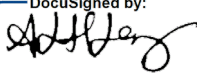
<sup>2</sup> Because these events do not affect the outcome of the appeal, as explained below, we will not disclose the events here.

HOLDING

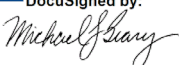
Appellant has not established reasonable cause to abate the late payment penalty.

DISPOSITION

Respondent’s action is sustained.

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Andrea L.H. Long  
Administrative Law Judge

We concur:

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Michael F. Geary  
Administrative Law Judge

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Richard Tay  
Administrative Law Judge

Date Issued: 11/5/2021