

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
J. SHEKARFROUSH

) OTA Case No. 21047625
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OPINION

Representing the Parties:

For Appellant: J. Shekarfroush

For Respondent: Carolyn S. Kuduk, Tax Counsel III

O. AKOPCHIKYAN, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. Shekarfroush (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$590.85 for tax year 2019.

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

ISSUE

Whether appellant has established reasonable cause to abate the late payment penalty for tax year 2019.

FACTUAL FINDINGS

1. On October 15, 2020, appellant timely filed his 2019 California tax return within the automatic extension period and reported a total tax of \$22,336, total withholdings of \$1,630, estimated tax payments of \$11,616, and tax due of \$9,090. Appellant remitted a payment of \$9,419 on that date, and FTB applied the extra \$329 to the late payment penalty it later assessed for tax year 2019.

2. On November 12, 2020, FTB issued a notice imposing a late payment penalty of \$590.85, plus interest, because FTB did not receive tax due of \$9,090 by the payment due date.¹
3. On November 23, 2020, appellant paid the outstanding balance.
4. On December 11, 2020, appellant requested that FTB abate the late payment penalty, which FTB accepted as a refund claim that it denied on February 8, 2021. 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.) However, for the 2019 tax year, FTB postponed the statutory original filing and payment due date to July 15, 2020, due to COVID-19. Appellant remitted his final 2019 tax payment on October 15, 2020, after the due date. Thus, FTB properly imposed and computed the late payment penalty on that amount.

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 willful neglect. (R&TC, § 19132(a)(1).) To establish reasonable cause for a 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 Triple Crown Baseball LLC*, 2019-OTA-025P.) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof. (*Appeal of Scanlon*, *supra*.)

Appellant contends that the late payment penalty should be abated because he paid \$1,630 in withholdings and \$11,616 in estimated tax payments before the payment due date, and these payments totaling \$13,246 exceeded his total 2018 tax liability of \$9,636. Put differently, appellant claims that because he did not know how much taxable income he was going to recognize for tax year 2019 by the July 15, 2020 payment due date, he made sure he paid at least

¹ For tax year 2019, the statutory original filing and payment due date was postponed to July 15, 2020, due to COVID-19. (See *State Postpones Tax Deadlines Until July 15 Due to the COVID-19 Pandemic*, March 18, 2020, available at: <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2020-3-statepostpones-tax-deadlines-until-july-15-due-to-the-covid-19-pandemic.html>; R&TC, § 18572.)

the tax owed for tax year 2018. However, appellant has not provided any evidence showing why he could not calculate and pay his 2019 tax liability by the July 15, 2020 due date. Unsupported assertions are insufficient to satisfy a taxpayer’s burden of proof. (*Appeal of Scanlon, supra.*)

Appellant also contends that COVID-19 caused him to experience “a number of setbacks” that prevented him from working “at full efficiency or optimal level to ensure [his] records [were] properly addressed and balanced.” However, appellant has not provided any information for us to understand what those setbacks were and how they impacted his ability to timely pay his 2019 taxes.

Lastly, appellant contends that the late payment penalty should be abated based on his “good history of timely and consistent payments.” However, California law does not automatically abate late payment penalties based on a history of timely compliance. (See *Appeal of Xie*, 2018-OTA-076P.) While a history of timely compliance may support a taxpayer’s credibility and intent, a history of timely compliance does not, by itself, establish reasonable cause. (*Ibid.*)

Accordingly, we find that appellant has not established reasonable cause to abate the late payment penalty for tax year 2019.

HOLDING

Appellant has not established reasonable cause to abate the late payment penalty for tax year 2019.

DISPOSITION

FTB’s denial of appellant’s refund claim is sustained.

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Ovsep Akopchikyan

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Ovsep Akopchikyan
Administrative Law Judge

We concur:

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Andrea L.H. Long

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Andrea L.H. Long
Administrative Law Judge

DocuSigned by:

Sara A. Hosey

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Sara A. Hosey
Administrative Law Judge

Date Issued: 5/11/2022