

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

In the Matter of the Appeal of: ) OTA Case No. 21017126  
F. GHANEM AND )  
D. GHANEM )  
\_\_\_\_\_ )

**OPINION**

Representing the Parties:

For Appellants: F. Ghanem and D. Ghanem

For Respondent: Alisa L. Pinarbasi, Tax Counsel

H. LE, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, F. Ghanem and D. Ghanem (appellants) appeal an action by the Franchise Tax Board (respondent) denying appellants’ claim for refund of \$568.56 for the 2017 tax year.

**ISSUE**

Whether appellants have established reasonable cause to abate the late-payment penalty for the 2017 tax year.

**FACTUAL FINDINGS**

1. A fire was caused at appellants’ house in November 2017.
2. Appellants timely filed their 2017 California income tax return.
3. Appellants made two late tax payments on September 15, 2018, and November 13, 2018.
4. Respondent imposed a late-payment penalty of \$568.56.
5. Appellants filed a claim for refund for \$568.56, which respondent denied.
6. This timely appeal followed.
7. On appeal, Office of Tax Appeals (OTA) requested an additional briefing from appellants for information and documents relating to their house fire. Appellants did not respond.

## 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.<sup>1</sup> The late-payment 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.<sup>2</sup> (R&TC, § 19132(a).) To establish reasonable cause, 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. (*Appeal of Scanlon*, 2018-OTA-075P.)

Here, appellants assert that they were “displaced for a few months” by a house fire in November 2017. However, appellants have not provided evidence to show that they were still affected by the house fire for the period when the payment was due on April 15, 2018, until when they submitted an initial payment on September 15, 2018, and a remaining payment on November 13, 2018. An acceptable reason for failure to pay taxes “will excuse such failure only so long as the reason remains valid.” (*Appeal of Triple Crown Baseball LLC*, 2019-OTA-025P.) Accordingly, appellants have not shown that the late tax payments were due to the house fire.

Appellants also generally assert that the house fire resulted in lost mail and assert they were experiencing financial hardship, but appellants have not submitted evidence to support their assertions. Unsupported assertions are not sufficient to satisfy appellants’ burden of proof. (*Appeal of Scanlon*, *supra*.)

Finally, appellants note their good compliance history. However, for the period at issue, California law does not have a procedure for abating a late-payment penalty based on compliance history.<sup>3</sup> (*Appeal of Scanlon*, *supra*.) Accordingly, appellants have failed to establish that their late tax payments were due to reasonable cause.

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<sup>1</sup> Appellants do not dispute the imposition of the penalty.

<sup>2</sup> There are no allegations of willful neglect in this appeal.

<sup>3</sup> R&TC section 19132.5 provides for a one-time abatement a timeliness penalty based on a history of compliance but only for taxable years beginning on or after January 1, 2022.

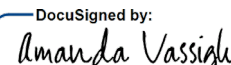
HOLDING

Appellants have not established reasonable cause to abate the late-payment penalty for the 2017 tax year.

DISPOSITION

Respondent’s denial of appellants’ claim for refund is sustained.

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Huy “Mike” Le  
Administrative Law Judge

We concur:  
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Amanda Vassigh  
Administrative Law Judge

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Michael F. Geary  
Administrative Law Judge

Date Issued: 9/8/2022