

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 22029666
C. MITRO)
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OPINION

Representing the Parties:

For Appellant: Mitchell Peterson, Representative

For Respondent: Camille Dixon, Tax Counsel

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) 19324, C. Mitro (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$3,466.73, plus interest, for the 2020 taxable year.

Appellant waived the right to an oral hearing; therefore, the Office of Tax Appeals (OTA) decides the matter based on the written record.

ISSUE

Has appellant established reasonable cause to abate the late-payment penalty?

FACTUAL FINDINGS

1. Appellant filed a timely California tax return for taxable year 2020 reporting tax due.
2. Appellant paid the reported balance due late on October 14, 2021.
3. FTB sent to appellant a Notice of Tax Return Change - Revised Balance, imposing a late-payment penalty of \$3,466.73, plus interest.
4. Appellant paid the late-payment penalty and filed a claim for refund, which FTB denied.
5. 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.) For the 2020 taxable year, FTB postponed the filing and payment due date to May 17, 2021.¹ Appellant did not remit payment until October 14, 2021; therefore, FTB properly imposed the late-payment penalty.

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 was not due to 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*, 2019-OTA-025P.) As to appellant's burden, the applicable standard of proof is by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(c).)

Appellant asserts that she had reasonable cause to file late because: (1) appellant received an extension² to file her taxes late and believed that also extended the due date for payment of tax; (2) appellant had previously received refunds in the past, so this was the first time she owed taxes; and (3) appellant has had a “clean history.”

With respect to the first two reasons appellant asserts, she concedes that the payment was late due to her ignorance of the law. However, ignorance of the law does not excuse the failure to meet statutory deadlines. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P; see also *United States v. Boyle* (1985) 469 U.S. 241, 251-252 [“It requires no special training or effort to ascertain a deadline and make sure that it is met.”].) Appellant did not exercise ordinary care

¹ See <https://www.ftb.ca.gov/about-ftb/newsroom/2020-tax-year-extension-to-file-and-pay-individual.html#:~:text=California%20postponed%20the%202020%20tax,taxpayers%20to%20May%2017%2C%202021.>

² In California there is an automatic six-month extension to file an individual tax return, provided the return is filed within the extension period. (R&TC, § 18567; Cal. Code Regs., tit. 18, § 18567.) For the 2020 taxable year, the extended filing due date was October 15, 2021. (<https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2021-09-october-15-tax-deadline-approaching-to-file-and-claim-the-golden-state-stimulus.html>.) Because appellant filed her return and paid her taxes on October 14, 2021, she believed she timely paid her taxes.

when she failed to acquaint herself with the requirements of California tax law. (See *Appeal of Cremel and Koeppel*, 2021-OTA-222P.)

From appellant’s assertion that she has had a “clean history,” OTA interprets that to be a request for an abatement based on good filing and payment history. The record reflects that the IRS granted a first-time abatement of a penalty based on appellant’s federal history of timely filing and paying. However, although California has adopted a similar program by statute allowing for abatement of timeliness penalties under certain circumstances for taxpayers with a good filing and payment history, the statute only operates for taxable years beginning on or after January 1, 2022. (R&TC, § 19132.5(f).) The taxable year at issue here is 2020, and OTA has no authority to apply the statute retroactively.

HOLDING

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

DISPOSITION

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

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Teresa A. Stanley

Administrative Law Judge

We concur:

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Ovsep Akopchikyan

Administrative Law Judge

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Eddy Y.H. Lam

Administrative Law Judge

Date Issued: 11/7/2022