

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
E. GIMBEL

) OTA Case No. 21027226
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)

OPINION

Representing the Parties:

For Appellant: Michael S. Sy, Enrolled Agent

For Respondent: Christopher Cook, Tax Counsel III
Eric Yadao, Tax Counsel IV

For Office of Tax Appeals: Lily Lequang, Graduate Student Assistant

H. LE, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, E. Gimbel (appellant) appeals the action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$765.74¹ for the 2019 tax year.

Office of Tax Appeals (OTA) Administrative Law Judges Huy “Mike” Le, Daniel K. Cho, and John O. Johnson held an electronic oral hearing for this matter on July 26, 2022. At the conclusion of the hearing, OTA held the record open to allow respondent time to resubmit exhibits. Thereafter, OTA closed the record and submitted this matter for decision.

ISSUE²

Whether appellant has established reasonable cause for the late payment of tax to abate the late-payment penalty.

¹ This amount consists of the late-payment penalty of \$540.74 and an estimate tax penalty of \$225.00.

² At the prehearing conference, appellant stated that only the late-payment penalty is in dispute. Appellant does not dispute the estimated tax penalty.

FACTUAL FINDINGS

1. Appellant timely filed her 2019 California Tax Return. Appellant reported an outstanding tax due of \$8,319. However, appellant did not make a timely payment.
2. Subsequently, respondent issued a Notice of Tax Return Change to appellant, in which respondent informed appellant that it imposed, among other items, a late-payment penalty of \$540.74. Appellant paid the balance due.
3. Then, appellant submitted a claim for refund, which respondent denied.
4. 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. Generally, the date prescribed for the payment is the due date of the return (without regard to extensions of time for filing).³ (R&TC, § 19001.) Here, appellant does not dispute the imposition or calculation of the late-payment penalty.

The late-payment penalty may be abated, however, 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 the 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 Moren*, 2019-OTA-176P.) The taxpayer bears the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Ibid.*) Unsupported assertions are not sufficient to satisfy an appellant's burden of proof. (*Ibid.*)

Appellant asserts that the late-payment penalty should be abated because in March 2020, the statewide lockdown shut down her medical clinic and suspended her operations. Appellant also asserts that her priority was patient care and that she had emergency cases during the

³ R&TC section 18572, which incorporates Internal Revenue Code section 7508A, gives respondent the authority to postpone time-sensitive acts. The original filing and payment deadline for the 2019 tax year was postponed from April 15, 2020, to July 15, 2020, due to the COVID-19 pandemic. (See <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2020-3-state-postpones-tax-deadlines-until-july-15-due-to-the-covid-19-pandemic.html>.)

pandemic. However, appellant does not present any credible or competent evidence to support her assertions.⁴ Thus, appellant has not shown reasonable cause for the late payment of tax.

HOLDING

Appellant has not established reasonable cause for the late payment of tax to abate the late-payment penalty.

DISPOSITION

OTA sustains respondent’s action denying appellant’s claim for refund.

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Huy “Mike” Le
Administrative Law Judge

We concur:
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Daniel K. Cho
Administrative Law Judge

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John O. Johnson
Administrative Law Judge

Date Issued: 9/29/2022

⁴ Appellant’s sole evidence in support of her assertions is her own unsworn and unnotarized letter written during this appeal.