

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

In the Matter of the Appeal of: ) OTA Case No. 221011613  
**JOHN STEVENSON PLUMBING &** )  
**MECHANICAL, INC.** )  
\_\_\_\_\_ )

**OPINION**

Representing the Parties:

For Appellant: Kevan Farrer, Controller

For Respondent: Eric A. Yadao, Tax Counsel IV

S. BROWN, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, John Stevenson Plumbing & Mechanical, Inc. (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$1,826.50 for the 2020 tax year.

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

**ISSUE**

Whether appellant is entitled to abatement of the late-payment penalty imposed for the 2020 tax year.

**FACTUAL FINDINGS**

1. Appellant is a corporation that was subject to an April 15, 2021 deadline for filing its 2020 California income tax return and paying the taxes due. Appellant made estimated tax payments to FTB for the 2020 tax year of \$32,789.00 on May 4, 2021, and \$385.00 on May 27, 2021. Appellant untimely filed its 2020 tax return with FTB on June 20, 2021. Thereafter, FTB imposed a late-payment penalty of \$1,826.50 (consisting of an underpayment penalty of \$1,658.70 and a monthly penalty of \$167.80).

2. On May 6, 2022, FTB issued to appellant a Corporation Notice Past Due regarding the \$1,826.50 penalty, plus interest. In May 2022, appellant paid the amount due in full.
3. On June 1, 2022, appellant filed a claim for refund dated May 25, 2022, requesting a refund of the late-payment penalty. On September 7, 2022, FTB issued a denial of the claim for refund.
4. This timely appeal followed.

### DISCUSSION

R&TC section 19132 imposes a late-payment penalty when a taxpayer fails to pay the amount of tax 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 (determined without regard to any extension of time for filing the return). (R&TC, § 19001.) Here, the late-payment penalty was properly imposed because appellant failed to pay its tax liability by the due date of April 15, 2021.<sup>1</sup> Appellant has not disputed that its payment was late or that FTB properly calculated the late-payment penalty amount. Thus, the only issue is whether appellant has demonstrated reasonable cause for its failure to make a timely payment of tax.

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 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 a taxpayer's burden of proof. (*Ibid.*)

Appellant contends that reasonable cause for its late payment exists because appellant's attorney died from COVID-19 and appellant's office staff was "decimated" by COVID-19. Appellant also states that FTB's September 7, 2022 notice denying the claim for refund was issued more than 90 days after FTB's receipt of the claim for refund and comments that "if California's draconian measures and excuses are valid for COVID, then quid pro quo."

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<sup>1</sup> Due to COVID-19, FTB postponed the payment and filing deadlines for the 2020 tax year from April 15, 2021, to May 17, 2021, for individuals only, but did not postpone those deadlines for businesses. (See <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2021-03-state-tax-deadline-for-individuals-postponed-until-may-17-2021.html>.)

While OTA is sympathetic to appellant's losses during the COVID-19 pandemic, appellant's submission does not establish reasonable cause for appellant's failure to timely pay its taxes. Each taxpayer has a personal, non-delegable duty to timely pay the amount due. (See *Appeal of Fisher*, 2022-OTA-337P; see also *U.S. v. Boyle* (1985) 469 U.S. 241, 251.) A taxpayer's reliance on a tax preparer or agent to timely pay tax does not constitute reasonable cause. (See *Appeal of Berolzheimer* (86-SBE-172) 1986 WL 22860; see also *U.S. v. Boyle*, *supra*, 469 U.S. at 251.) Appellant's assertions do not establish how the loss of its attorney or the effects of the COVID-19 pandemic on appellant's staff constituted reasonable cause for appellant's failure to timely pay taxes.

Finally, appellant's statement that FTB's September 7, 2022 notice denying the claim for refund was issued more than 90 days after FTB's receipt of the claim for refund does not establish any basis for relief of the late-payment penalty. R&TC section 19323(a) requires that if FTB disallows any claim for refund, it must notify the taxpayer accordingly and provide an explanation for the disallowance. The law does not specify a deadline for FTB's issuance of this notification, except that if FTB fails to mail a notice of action on any refund claim within six months after the claim is filed, the taxpayer may consider the claim disallowed and appeal that denial. (R&TC, § 19331.) In the present case, because FTB denied appellant's June 1, 2022 claim on September 7, 2022, FTB's denial was within the six-month period, and thus did not trigger that provision under R&TC section 19331. Thus, the timing of FTB's denial of the claim for refund is not relevant to any grounds for relief of the late-payment penalty.

HOLDING

Appellant has not established reasonable cause to abate the penalty.

DISPOSITION

FTB’s action is sustained.

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*Suzanne B. Brown*

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Suzanne B. Brown  
Administrative Law Judge

We concur:

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*Andrea LH Long*

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Andrea L.H. Long  
Administrative Law Judge

DocuSigned by:

*Josh Lambert*

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Josh Lambert  
Administrative Law Judge

Date Issued: 8/2/2023