

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: )  
D. ABECASSIS AND )  
B. ABECASSIS )  
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OTA Case No. 230513281

**OPINION**

Representing the Parties:

For Appellants: D. Abecassis

For Respondent: Alisa L. Pinarbasi, Attorney

M. GEARY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, D. Abecassis and B. Abecassis (appellants) appeal an action by the Franchise Tax Board (respondent) denying appellants’ claim for refund of \$3,969 for the 2021 tax year.

Appellants elected to have this appeal determined pursuant to the procedures of the Office of Tax Appeals’ (OTA’s) Small Case Program. Those procedures require the assignment of a single administrative law judge. (Cal. Code Regs., tit. 18, § 30209.05, et seq.) This matter is being decided on the basis of the written record because appellants waived the right to an oral hearing.

**ISSUE**

Are appellants entitled to abatement of the late-payment penalty?

**FACTUAL FINDINGS**

1. Appellants timely filed their 2021 California income tax return on October 14, 2022, reporting tax, penalties, and interest due.
2. Because appellants did not timely pay the tax due, respondent calculated a late-payment penalty of \$3,968.91 and interest of \$715.77 due. This was \$35.32 less than the penalty

and interest self-reported and paid by appellants with their return. Respondent refunded the excess to appellants.

3. Appellants timely filed a claim for refund of \$3,969, asserting that the late-payment was due to reasonable cause, and, therefore, the late-payment penalty should be abated and refunded to them.
4. By letter dated May 5, 2023, respondent denied appellants' claim for refund. 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. Absent extraordinary circumstances, such as respondent's postponement of the due date, 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.) Because the return and payment due date, April 15, 2022 (R&TC, § 18566), fell on a weekend that was followed by a federal holiday, no penalty applied if returns were filed and the tax due was paid by April 18, 2022.

When respondent imposes a penalty, it is presumed to have been imposed correctly.<sup>1</sup> (*Todd v. McColgan* (1949) 89 Cal.App.2d 509; *Appeal of Xie*, 2018-OTA-076P.) A late-payment penalty may be abated if the taxpayer shows that the failure to make a timely payment was due to reasonable cause and was not due to willful neglect. (R&TC, § 19132(a)(1).) To establish entitlement to abatement, a taxpayer must show that the failure to make a timely payment occurred despite the exercise of ordinary business care and prudence and that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Appeal of Rougeau*, 2021-OTA-335P.)

The law generally requires proof by a preponderance of the evidence, which means the taxpayer must establish by documentation or other evidence that the circumstances it asserts are, more likely than not, true. (Cal. Code Regs., tit. 18, § 30219(b); *Concrete Pipe and Products of California, Inc. v. Construction Laborers Pension Trust for Southern California* (1993) 508 U.S. 602, 622.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Porreca*, 2018-OTA-095P.)

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<sup>1</sup> Here, appellants do not dispute that their payment was late or that respondent correctly calculated and imposed the penalty.

In this case, appellants' claim for refund was based on D. Abecassis and family having experienced serious illness due to severe COVID-19 infection, which caused D. Abecassis to be unable to collect the information that appellants required to complete and file an accurate California income tax return. Appellants further asserted in their claim that they filed their 2021 return as soon as possible after obtaining the required information.

Illness may constitute reasonable cause where the taxpayers prove that the illness prevented them from complying with the law. (*Appeal of Triple Crown Baseball LLC*, 2019-OTA-025P) However, good cause does not exist if the illness simply required the taxpayers to choose which obligation(s) would be timely met, and the taxpayers choose to use their limited physical resources to do something other than timely pay taxes. (*Ibid.*) Furthermore, difficulty obtaining information does not alone constitute reasonable cause for failing to file a timely return. (*Appeal of Xie*, 2018-OTA-076P.) The correct approach is to file a timely return based upon available information and an amended return, if necessary, as soon as additional information becomes available. (*Ibid.*) Similarly, if a taxpayer proves that it could not, through any reasonable means, discover information required to accurately report taxes, it could be entitled to relief, but only for the late-payment of that part of the taxes that could not be reasonably estimated and only for such period of time that was required to obtain and report based on the new information. (*Appeal of Moren*, 2019-OTA-176P.)


Appellants provided no details regarding the required but missing information and no evidence to support their claim of disability. They did not, for example, provide evidence to show when the taxpayers were seriously ill, how the illness affected their ability to gather information to complete their return, what efforts were undertaken to obtain the required but missing information, or when and by whom those efforts were made. Respondent notes this absence of evidence to support appellants' argument. However, appellants have not subsequently provided supporting documentation to OTA. OTA therefore finds that appellants have not shown that their failure to make a timely payment was due to reasonable cause and was not due to willful neglect.

HOLDING

Appellants are not entitled to abatement of the late-payment penalty.

DISPOSITION

Respondent's action denying the claim for refund is sustained.

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Michael F. Geary  
Administrative Law Judge

Date Issued: 2/2/2024