

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
S. AGARWAL) OTA Case No. 230914421
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OPINION

Representing the Parties:

For Appellant: S. Agarwal¹
For Respondent: Lawrence Xiao, Attorney

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, S. Agarwal (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$892.86 for taxable year 2021.

Appellant elected to have this appeal determined pursuant to the procedures of the Small Case Program. Those procedures require the assignment of a single administrative law judge. (Cal. Code Regs., tit. 18, § 30209.05.) 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 2021 California Resident Income Tax Return, reporting tax due of \$14,881 and self-assessing an underpayment of estimated tax penalty. Appellant did not remit payment with the return.

¹ Appellant filed a joint tax return; however, the joint filer did not sign the appeal so only appellant is a party to this appeal.

2. Appellant paid FTB \$5,100, which was credited to appellant's taxable year 2022 effective April 15, 2022. A copy of a check for \$5,100, dated April 12, 2022, and a copy of the associated payment voucher show that the payment was to be applied to taxable year 2022. Appellant submitted a screenshot of MyFTB webpage entitled Estimate Payments and Credits that shows that the \$5,100 was applied to taxable year 2022.
3. FTB assessed a late-payment penalty of \$892.86 plus interest.
4. Appellant made a payment on May 25, 2022, fully satisfying the tax due of \$14,881, plus penalties and interest.
5. Appellant filed a claim for refund of the late-payment penalty, which FTB denied.
6. 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 tax. Generally, the date prescribed for the payment of tax is the due date of the return (without regard to extensions of time for filing). (R&TC, § 19001.) The late-payment penalty may be abated where a 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).) 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.*)

Appellant asserts that the \$5,100 estimated payment was intended to be for taxable year 2021, not for 2022 as applied by FTB. Appellant claims that it was a mistake to click on taxable year 2022 when the estimated tax payment was intended for taxable year 2021. Appellant also requests abatement of the late-payment penalty based on a 35-year history of filing and paying taxes on time.

OTA's record reflects that appellant chose to apply the \$5,100 payment for the taxable year 2022. First, appellant submitted the check to FTB for \$5,100 with a payment voucher for taxable year 2022. The MyFTB webpage screenshot shows that the check was applied to taxable year 2022 as appellant requested. Appellant claims a mistake due to "clicking 2022 tax year" while making a payment for 2021; however, FTB had no way of knowing about the error and

could not have applied the payment to taxable year 2021 instead of 2022. Appellant's mistake or oversight do not constitute reasonable cause for paying taxes late. (*Appeal of Friedman*, 2018-OTA-077P.) Appellant has offered no other evidence to show appellant acted as would an ordinarily intelligent and prudent businessperson under the circumstances. Appellant has, therefore, not established reasonable cause sufficient to abate the late-payment penalty. Moreover, the late-payment penalty applies to the entire \$14,881 tax due, not just to the \$5,100 estimated payment that appellant misapplied to taxable year 2022. The \$14,881 was paid late on May 25, 2022, and appellant has not argued, much less established, a basis to abate the entire late-payment penalty.

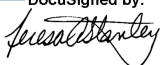
Appellant's other argument that the late-payment penalty should be abated based on appellant's 35- year history of filing and paying taxes on time does not constitute reasonable cause for taxable year 2021. R&TC section 19132.5 provides for a one-time abatement of certain timeliness penalties based on a taxpayer's filing and payment history; however, it applies only to taxable years beginning on or after January 1, 2022. It is not applicable to appellant's taxable year 2021 at issue here.

HOLDING

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

DISPOSITION

FTB's action is sustained.

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Teresa A. Stanley
Administrative Law Judge

Date Issued: 3/4/2024