

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: )  
T. PALMER ) OTA Case No. 230513409  
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**OPINION**

Representing the Parties:

For Appellant: Aubrey Hone, Attorney

For Respondent: Eric A. Yadao, Attorney

A. WONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, T. Palmer (appellant) appeals the Franchise Tax Board’s (respondent’s) action denying appellant’s claim for refund of \$12,319.12 for the 2020 tax year.

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

**ISSUE**

Whether appellant has shown that there is reasonable cause to abate the late-payment penalty.

**FACTUAL FINDINGS**

1. Appellant paid his 2020 California personal income taxes one day late on May 18, 2021.<sup>1</sup>
2. Respondent imposed a late-payment penalty on appellant.
3. Appellant paid the late-payment penalty and filed a claim for refund, which respondent denied.
4. This timely appeal to OTA followed.

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<sup>1</sup> In response to COVID-19, respondent postponed the due date for tax payments by individual taxpayers for the 2020 tax year from April 15, 2021, to May 17, 2021. (See <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2021-03-state-tax-deadline-for-individuals-postponed-until-may-17-2021.html>.)

## DISCUSSION

The late-payment penalty may be abated if the taxpayer shows that the failure to make a timely payment was due to reasonable cause and not willful neglect. (R&TC, § 19132(a)(1).) To establish reasonable cause, the taxpayer must show that the failure to make a timely payment occurred despite the exercise of ordinary business care and prudence. (*Appeal of Rougeau*, 2021-OTA-335P.) The taxpayer bears the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Ibid.*) A failure to pay will be considered due to reasonable cause if the taxpayer makes a satisfactory showing that he or she exercised ordinary business care and prudence in providing for the payment of his or her tax liability and were nevertheless either unable to pay the tax or would suffer undue hardship if he or she paid on the due date. (*Appeal of Friedman*, 2018-OTA-077P.) An untimely payment caused by an oversight does not, by itself, constitute reasonable cause. (*Ibid.*)

On appeal, appellant does not dispute that his tax payment was late. Rather, he contends that his failure to timely pay was due to reasonable cause and that he exercised ordinary care and prudence in paying his taxes. Specifically, appellant points to a 2020 roof collapse at his home—a three-unit building jointly owned with his brother—that led to “housing issues” for himself, his brother, and a tenant. For support, appellant provided a property insurance document indicating a date of loss of June 8, 2020, and a date completed of November 17, 2022, as well as three pictures. Appellant also cites to “abnormal” payment due dates resulting from a pandemic and notes that all of his prior tax payments have been timely.<sup>2</sup>

Although appellant asserts that he exercised ordinary care and prudence in paying taxes, he has not actually explained or substantiated with evidence how this was so. Appellant is silent regarding any efforts to pay his taxes in a timely manner. (See *Appeal of Moren*, 2019-OTA-176P [discussing a taxpayer’s efforts to timely pay his taxes].) Further, OTA fails to see how a roof collapsing on or about June 8, 2020, as well as ensuing housing issues—though extremely unfortunate—constitute reasonable cause for failing to make tax payments due nearly a year later, on May 17, 2021. OTA would expect that nearly a year would be sufficient time for an

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<sup>2</sup> Additionally, appellant contends that he did not realize that his 2020 tax payment was late until October 2022, when his bank notified him of a levy, and that he did not receive notices from respondent regarding the late-payment penalty because he underwent numerous, temporary address changes resulting from the roof collapse. However, appellant has not explained how these contentions contribute or relate to why his payment was late. Accordingly, OTA will not discuss these specific contentions further.


ordinarily intelligent and prudent businessperson to arrange timely payment of taxes. OTA also fails to see how respondent’s *extension* of a tax payment deadline would contribute to appellant missing that deadline. Finally, appellant’s history of timely paying his taxes is not a basis for abating the late-payment penalty. (*Appeal of Scanlon*, 2018-OTA-075P; but see R&TC, § 19132.5 [for tax years beginning on or after January 1, 2022, an individual taxpayer shall receive, under certain conditions, a one-time abatement of the late-payment penalty under R&TC section 19132].) For the reasons described, OTA concludes that appellant has failed to show that he exercised ordinary business care and prudence or that there was reasonable cause to abate the late-payment penalty.

HOLDING


Appellant has not shown that there was reasonable cause to abate the late-payment penalty.


DISPOSITION

Respondent’s action in denying appellant’s claim for refund is sustained.

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Andrew Wong  
Administrative Law Judge

We concur:

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Josh Lambert  
Administrative Law Judge

DocuSigned by:  
  
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Eddy Y.H. Lam  
Administrative Law Judge

Date Issued: 4/12/2024