

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

In the Matter of the Appeal of: )  
J. DE LEON ) OTA Case No. 230914277  
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**OPINION**

Representing the Parties:

For Appellant: J. De Leon

For Respondent: Tristen Thalhuber, Attorney

V. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. De Leon (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$539.17, plus interest for the 2021 tax year.

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

**ISSUES**

1. Whether appellant has established a basis to abate the late-payment penalty.
2. Whether appellant has established a basis to abate interest.

**FACTUAL FINDINGS**

1. Appellant filed a 2021 California income tax return reporting tax due.
2. Appellant paid the tax balance due on May 15, 2022.
3. FTB issued appellant a Notice of Tax Return Change - Revised Balance (Notice) imposing a late-payment penalty and interest.
4. When appellant did not respond to the Notice, FTB initiated collection action and received payments on appellant’s account.
5. Appellant submitted a claim for refund requesting abatement of the penalty and interest on the basis that appellant’s mother passed away in July 2021, appellant herself lost her

job in May of 2023, and that appellant was delayed in paying her tax balance due because of dealing with these personal difficulties.

6. FTB denied appellant's claim for refund. This timely appeal followed.

### DISCUSSION

#### Issue 1: Whether appellant has established a basis to abate the late-payment penalty.

California imposes a penalty for the failure to pay the amount shown as due on a return on or before the due date of the return, unless it is shown that the late payment is due to reasonable cause and not willful neglect. (R&TC, § 19132(a)(1).) Appellant does not contest the imposition or computation of the late-payment penalty, but makes reasonable cause type arguments that it should be abated.

To establish reasonable cause, 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 Scanlon*, 2018-OTA-075P.) The taxpayer bears the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Appeal of Belcher*, 2021-OTA-284P.) Inability to pay tax due to financial hardship may establish reasonable cause to abate the late-payment penalty, but if the taxpayer's difficulties simply cause them to sacrifice the timelessness of one aspect of the taxpayer's affairs to pursue other aspects, the taxpayer must bear the consequences of that choice. (*Appeal of Triple Crown Baseball LLC*, 2009-OTA-025P.)

Appellant contends that she was not able to timely pay the tax due because her mother passed away in July of 2021, appellant lost her job in May of 2023, and she is dealing with her mother's financial affairs as well as her own.

While sympathetic, appellant's contentions regarding the passing of her mother in July of 2021 and appellant's job loss in May of 2023 do not establish that she exercised ordinary business care and prudence and was nonetheless unable to meet her tax payment obligations, when her tax payment was due on April 15, 2022, and was unpaid until May 15, 2022. Appellant asserts that she was dealing with her and her mother's financial affairs, and it appears she worked during the period her tax payment was due, as she states did not lose her job until 2023. As a result, appellant appears to have sacrificed the timeliness of her tax affairs to pursue

her other affairs. Accordingly, appellant has not established a basis to abate the late-payment penalty.

Appellant also contends the late-payment penalty should be abated based on her good filing history. However, California law does not allow for penalty abatement on the basis of a taxpayer's filing history for the 2021 tax year.<sup>1</sup>

Issue 2: Whether appellant has established a basis to abate interest.

Tax is due on the original due date of the return without regard to any filing extension. (R&TC, § 19001.) If a taxpayer does not pay the tax by the original due date of the tax return, or if FTB assesses additional tax, the law provides for charging interest on the balance due. (R&TC, § 19101.) Imposition of interest is mandatory; it is not a penalty, but it is compensation for a taxpayer's use of money after it should have been paid to the state. (*Appeal of Moy*, 2019-OTA-057P.) There is no reasonable cause exception to the imposition of interest. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.) To obtain relief from interest, a taxpayer must qualify under the waiver provisions of R&TC sections 19104, 19112, or 21012. (*Appeal of Moy, supra.*)

In this case, appellant only provides reasonable cause arguments for the abatement of interest. Appellant has not shown that she qualifies for waiver or abatement of interest under the provisions of R&TC sections 19104, 19112, or 21012.<sup>2</sup> Additionally, there is no reasonable cause exception to the imposition of interest. (*Appeal of GEF Operating, Inc., supra.*) Consequently, appellant has not established a basis to interest abatement.

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<sup>1</sup> R&TC section 19132.5 allows for the abatement of an individual's first-time timeliness penalties. However, that section only applies to tax years beginning on or after January 1, 2022.

<sup>2</sup> OTA does not have jurisdiction to review FTB's interest abatement determination under R&TC section 19112. (*Appeal of Moy, supra.*)

HOLDINGS

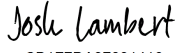
1. Appellant has not established a basis to abate the late-payment penalty.
2. Appellant has not established a basis to abate interest.

DISPOSITION

FTB’s denial of appellant’s claim for refund is sustained.

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 Veronica I. Long  
 Administrative Law Judge

We concur:

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 Josh Lambert  
 Administrative Law Judge

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 Administrative Law Judge

Date Issued: 7/3/2024