

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: )  
M. DAKER ) OTA Case No. 230513261  
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**OPINION**

Representing the Parties:

For Appellant: M. Daker  
For Respondent: Camille Dixon, Attorney

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. Daker (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying a claim for refund of \$830.96 for the 2021 taxable year.

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

**ISSUE<sup>1</sup>**

Has appellant established reasonable cause to abate the late-payment penalty?

**FACTUAL FINDINGS**

1. On January 29, 2022, appellant was admitted by the hospital and diagnosed with COVID-19 and related medical issues. On February 2, 2022, the hospital discharged appellant with oxygen therapy, which appellant continued to use through June of 2022.
2. Appellant timely filed a joint California Resident Income Tax Return with his spouse on October 14, 2022, within the automatic extension period for filing a 2021 tax return.<sup>2</sup> The return reported tax due of \$9,776. Appellant did not remit payment with the return.

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<sup>1</sup> Appellant makes no separate claim for abatement of interest. As such, OTA will not discuss it further.

<sup>2</sup> Appellant's spouse S. Daker did not sign the appeal so OTA addresses only M. Daker as appellant.

3. FTB imposed a late-payment penalty of \$830.96 plus applicable interest.
4. On November 1, 2022, appellant submitted a payment of the tax due of \$9,776, and on December 23, 2022, appellant paid \$988.80, which satisfied the late-payment penalty of \$830.96, plus applicable interest.
5. Appellant filed a claim for refund with FTB, requesting abatement of the late-payment penalty and applicable interest based on reasonable cause.
6. FTB denied the claim for refund, and 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. Generally, 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.) An extension of time to file a tax return is not an extension of time for payment of tax. (R&TC, § 18567(b).)

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 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 of the proper amount of tax occurred despite the exercise of ordinary business care and prudence. (*Appeal of Triple Crown Baseball, LLC*, 2019-OTA-025P.) The taxpayer bears the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Ibid.*)

Here, appellant does not dispute that the tax payment was late. Rather, appellant argues that he has reasonable cause for the late payment because he was hospitalized for a COVID-19 diagnosis with associated ailments on January 29, 2022, and was incapacitated through June of 2022. Appellant also states that he has a long history of compliance with tax obligations, and OTA should consider his historical compliance meeting tax deadlines.<sup>3</sup>

Illness may establish reasonable cause for late payment of tax where the taxpayer presents credible and competent proof that the circumstances of the illness prevented the taxpayer from complying with the law. (*Appeal of Triple Crown Baseball, LLC, supra.*) The

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<sup>3</sup> Appellant expressly notes his history of compliance with the IRS. Neither FTB nor OTA are affiliated with the IRS, and only appellant's compliance history with filing and paying his state taxes to FTB would be relevant to a discussion of the state taxes at issue.

evidence in OTA's record supports his assertion that he was medically disabled until sometime in June 2022. However, appellant provides no explanation for why he was unable to pay the tax due between June 2022 and the tax payment date of November 1, 2022. An acceptable reason for failure to pay taxes will excuse such failure only so long as the reason remains valid. (*Ibid.*) Moreover, appellant filed a joint return with S. Daker and also has not explained why the joint filer was unable to make a timely payment of the couple's tax for which they are jointly and severally liable. (R&TC, § 19006(b).) Therefore, appellant has not established reasonable cause to abate the late-payment penalty.


As to appellant's contention regarding his history of tax compliance, there is no basis in the law applicable to the 2021 taxable year to abate the penalty.<sup>4</sup> Based on the foregoing, OTA finds that appellant has not established reasonable cause for the late payment of tax.

#### HOLDING

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


#### DISPOSITION

FTB's action denying appellant's claim for refund is sustained.


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Teresa A. Stanley  
Administrative Law Judge

We concur:

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Amanda Vassigh  
Administrative Law Judge

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Richard Tay  
Administrative Law Judge

Date Issued: 6/19/2024

<sup>4</sup> For taxable years beginning on or after January 1, 2022, R&TC section 19132.5 allows an individual taxpayer to request a one-time abatement of a timeliness penalty. As the taxable year at issue is the 2021 taxable year, this provision does not apply in this case.