

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 230814095
C. REZA)
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OPINION

Representing the Parties:

For Appellant: C. Reza

For Respondent: AnaMarija Antic-Jezildzic, Specialist

For Office of Tax Appeals: Thomas Lo Grossman, Attorney

J. LAMBERT, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, C. Reza (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$969.87 for the 2021 tax year.

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

ISSUE

Has appellant met her burden to show the late payment penalty should be abated?

FACTUAL FINDINGS

1. Appellant untimely filed her 2021 California Resident Income Tax Return (Return) on March 8, 2023, with a balance due.
2. FTB processed appellant’s Return and issued appellant a Notice of Tax Return Change – Revised Balance, which imposed a late filing penalty, plus applicable interest.
3. On March 16, 2023, appellant paid the amount due.
4. On April 15, 2023, appellant filed a claim for refund asserting that her divorce and the final illness and passing of her parents, among other difficult personal circumstances, constituted reasonable cause for her late filing.

5. On June 27, 2023, FTB denied appellant's claim for refund.
6. On further review, on July 17, 2023, FTB abated the late filing penalty and instead imposed a late payment penalty. FTB issued a refund on appellant's claim for the difference between the late filing and late payment penalties. However, FTB denied appellant's claim for refund concerning the late payment penalty of \$969.87.
7. It is from this action that appellant timely appeals.

DISCUSSION

R&TC section 19132(a) 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.)

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 was not due to willful neglect. (R&TC, § 19132(a)(1).) When FTB imposes a penalty, the law presumes that the penalty was imposed correctly. (*Appeal of Xie*, 2018-OTA-076P.) To overcome this presumption, a taxpayer must provide credible and competent evidence supporting a claim of reasonable cause; otherwise the penalty cannot be abated. (*Ibid.*) 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.*) Illness may establish reasonable cause 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*, 2019-OTA-025P.)

For the 2021 tax year, the date prescribed for payment was April 18, 2022.¹ Appellant paid on March 8, 2023, over ten months after the due date. Appellant does not dispute the imposition or calculation of the late payment penalty. Accordingly, the remaining question on appeal is whether appellant has established reasonable cause to abate the penalty.

¹ The return due date for individuals filing on a calendar year basis is the 15th day of April following the close of the calendar year. (R&TC, § 18566.) However, Friday, April 15, 2022, was a federal holiday and therefore returns received on the following Monday, April 18, 2022, are considered by FTB to be timely filed. Therefore, the due date for payment of tax was April 18, 2022. (See R&TC, § 19001.)

Appellant asserts that her significant personal difficulties constitute reasonable cause.² FTB asked appellant during the pendency of appeal for substantiation of appellant’s circumstances and appellant failed to provide any evidence in support of her assertions. Since appellant has not supported her assertions, they are insufficient to satisfy appellant’s burden of proof. (*Appeal of Scanlon*, 2018-OTA-075P.)

HOLDING

Appellant has not met her burden to show the late payment penalty should be abated.

DISPOSITION

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

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Josh Lambert
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Josh Lambert
Administrative Law Judge

We concur:

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Veronica I. Long
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Veronica I. Long
Administrative Law Judge

DocuSigned by:
Asaf Kletter
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Asaf Kletter
Administrative Law Judge

Date Issued: 7/24/2024

² Appellant made these arguments in support of reasonable cause for the late filing penalty imposed under R&TC section 19131, which was abated by FTB. However, FTB has imposed the late payment penalty under R&TC section 19132 instead. This penalty also allows for reasonable cause abatement.