

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 230814103
O. COHEN)
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OPINION

Representing the Parties:

For Appellant: O. Cohen
For Respondent: Ariana Macedo, Graduate Legal Assistant

J. LAMBERT, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, O. Cohen (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$1,220.73 for the 2021 tax year.¹

Appellant waived the right to an oral hearing; therefore, the matter was submitted to the Office of Tax Appeals on the written record pursuant to California Code of Regulations, title 18, section 30209(a).

ISSUE

Whether appellant has established a basis to abate the late payment penalty.

FACTUAL FINDINGS

1. On October 7, 2022, appellant timely filed a 2021 California tax return reporting tax due of \$10,615. Appellant self-assessed an individual shared responsibility penalty of \$3,331, interest and penalties of \$1,073, and an underpayment of estimated tax (estimated tax) penalty of \$30, resulting in a total amount due of \$15,049.
2. On October 11, 2022, appellant made a check payment of \$10,616 to FTB, which was applied to the 2022 tax year.

¹ This amount is for the late payment penalty only. To the extent appellant’s claim for refund may exceed this amount, the Office of Tax Appeals notes that appellant does not specifically dispute or provide argument related to the underpayment of estimated tax penalty, the mandatory e-payment penalty, the individual shared responsibility penalty, the collection cost recovery fee, or interest. Therefore, those penalties, the fee, and interest will not be addressed further in this Opinion.

3. On October 31, 2022, FTB sent appellant a State Income Tax Balance Due Notice stating that appellant owed \$15,108.99, which included tax of \$10,615, and \$4,263.28, which was comprised of a late payment penalty, an estimated tax penalty, and an individual shared responsibility penalty, plus interest.
4. On November 16, 2022, FTB sent appellant a State Income Balance Due Notice stating that it was imposing a mandatory e-payment penalty of \$106.16.
5. FTB collected payment of \$16,163.05 through collection action, and appellant filed a claim for refund,² which FTB denied.
6. This timely appeal followed.

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 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.) When FTB imposes a penalty, the law presumes that the penalty was imposed correctly, and the taxpayer has the burden of proof to show that reasonable cause exists to support abatement of the penalty. (*Appeal of Red Vision Systems, Inc.*, 2023-OTA-561P.) To establish reasonable cause for a late payment of tax, a taxpayer must show that the failure to make a timely payment occurred despite the exercise of ordinary business care and prudence, or that cause existed as would prompt an ordinarily intelligent and prudent businessperson to have so acted under similar circumstances. (*Appeal of Belcher*, 2021-OTA-284P.)

Here, appellant does not dispute the imposition or calculation of the late payment penalty, but rather requests that the penalty be abated due to reasonable cause. Appellant contends that he intended to make a payment of \$10,616 on October 11, 2022, for the 2021 tax year, but accidentally checked the incorrect box that stated: “estimated payment for tax year 2022.” Appellant notes that the payment amount was the same amount due for the 2021 tax year.

However, appellant’s tax payment was due on April 15, 2022, which is six months before the October 11, 2022 payment. (See R&TC, §§ 19001, 18566.) Appellant has not provided any

² On June 28, 2023, FTB received a letter from appellant requesting waiver of the “fee/penalty.” On June 29, 2023, FTB received appellant’s request for one-time penalty abatement.


evidence to show that he took steps to timely pay by April 15, 2022, but that he was prevented from doing so despite the exercise of ordinary business care and prudence.³

HOLDING


Appellant has not established a basis to abate the late payment penalty.


DISPOSITION

FTB's action is sustained.

Signed by:

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Josh Lambert
Administrative Law Judge

We concur:

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Teresa A. Stanley
Administrative Law Judge

DocuSigned by:

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Steven Kim
Administrative Law Judge

Date Issued: 1/8/2025

³ Appellant also requested a one-time abatement of the late payment penalty. R&TC section 19132.5 allows an individual taxpayer to request a one-time abatement of a timeliness penalty, which includes the late payment penalty, for taxable years beginning on or after January 1, 2022. Because the 2021 tax year is at issue here, this law is inapplicable.