

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: )  
**M. SLAUGHTER** ) OTA Case No. 230613551  
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**OPINION**

Representing the Parties:

For Appellant: M. Slaughter

For Respondent: Alisa L. Pinarbasi, Attorney

For Office of Tax Appeals: Neha Garner, Attorney

M. GEARY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. Slaughter (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$23,439.35 for the 2021 tax year.

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

**ISSUE**

Is appellant entitled to abatement of the late-payment penalty?

**FACTUAL FINDINGS**

1. Appellant filed his 2021 California Resident Income Tax Return (Form 540) on October 15, 2022, reporting tax due and self-assessing a late-payment penalty and interest. On October 17, 2022, appellant paid the amount reported as due.
2. Respondent sent appellant a Notice of Tax Return Change – Revised Balance, to correct appellant’s computed penalty and interest.<sup>1</sup> Appellant paid balance due on November 3, 2022.

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<sup>1</sup> The amounts of the determined tax, interest, and penalty are undisputed.

3. Appellant filed a claim for refund dated November 7, 2022, which requested a refund of the late-payment penalty of \$23,439 and asserted that appellant's failure to timely pay was due to reasonable cause.
4. On April 13, 2023, respondent denied appellant's claim.
5. This timely appeal followed.

### DISCUSSION

Generally, the date prescribed for the payment of tax is the due date of the return without regard to extensions of the time for filing the return. (R&TC, § 19001.) 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 unless the taxpayer shows that the failure was due to reasonable cause and not due to willful neglect. When respondent imposes a penalty, the law presumes that the penalty was imposed correctly. (*Appeal of Xie*, 2018-OTA-076P.)

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. (R&TC, § 19132(a)(1); *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. (*Appeal of Triple Crown Baseball LLC*, 2019-OTA-025P.) This is an objective standard,<sup>2</sup> meaning that the taxpayer's sincere belief that they are following the law is not determinative. (*Appeal of Cremel and Koepfel*, 2021-OTA-222P.) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof. (*Appeal of Porreca*, 2018-OTA-095P.)

The late-payment penalty is the sum of two figures that may not exceed 25 percent of the unpaid tax. (R&TC, § 19132(a)(2).) The first addend is five percent of the tax that remained unpaid as of the due date. (R&TC, § 19132(a)(2)(A).) The second addend is 0.5 percent of the unpaid tax balance per month for each month, or portion of a month, that the tax remains unpaid after the due date, not to exceed 40 months. (R&TC, § 19132(a)(2)(B).)

Here, appellant's 2021 tax payment was due April 15, 2022. Respondent did not receive appellant's payment until October 17, 2022. Consequently, unless appellant can show that the late payment was due to reasonable cause and not due to willful neglect, respondent properly imposed a late-payment penalty, and it cannot be abated.

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<sup>2</sup> See *United States v. Boyle* (1985) 469 U.S. 241, 248 n. 6, cited with approval in *Conklin Bros. of Santa Rosa, Inc. v. United States* (9<sup>th</sup> Cir. 1993) 986 F.2d 315, 318.

Appellant makes several arguments in support of his request for abatement of the penalty. Appellant argues that there is reasonable cause for the late payment because: (1) appellant sincerely believed that he was following the law; (2) appellant mistakenly thought that income from two inherited S corporation interests was not taxable; and (3) appellant did not receive his Schedule K-1 that reported a large capital gain until after the payment due date. On appeal, appellant also requests what he refers to as a special, once-in-a-lifetime penalty cancellation.

As stated above, a taxpayer's sincere but mistaken belief that he is complying with the law does not constitute reasonable cause. Additionally, appellant's misunderstanding as to the taxability of flow-through income from inherited S corporation interests does not constitute reasonable cause. (R&TC, § 17131; IRC § 102(b).) Appellant's misunderstanding of the law alone is not reasonable cause for failing to comply with the law. (*Appeal of Wright Capital Holdings LLC*, 2019-OTA-219P.)

Appellant provides no reliable evidence to show when he received the Schedule K-1; but even if OTA assumes, for the purpose of this analysis, that appellant did not receive the Schedule K-1 until just before he filed the Form 540 on October 15, 2022, that does not excuse the late payment. A taxpayer's asserted lack of documentation or difficulty in calculating a tax liability does not, by itself, constitute reasonable cause for a late payment of tax. (*Appeal of Moren*, 2019-OTA-176P.) When a taxpayer requires information from someone else to fulfill the taxpayer's responsibilities to timely file returns or pay taxes due, the taxpayer cannot rely on the late arrival of that information to establish reasonable cause. (*Ibid.*) Instead, the taxpayer must show the efforts made to acquire the necessary information, and the evidence of those efforts must demonstrate that the taxpayer acted the way an ordinarily intelligent and prudent businessperson would have acted under similar circumstances. (*Ibid.*)

Here, appellant has provided no evidence to show what, if anything, he did to obtain the information he needed to timely pay the taxes due. Appellant has not established that his failure to timely pay the tax liability was due to a lack of information, or that the alleged lack of information was due to reasonable cause and not due to willful neglect. On the basis of the evidence, OTA finds that appellant is not entitled to abatement of the late-payment penalty.

Finally, regarding appellant's request for a special, once-in-a-lifetime penalty cancellation, the IRS has an administrative program called "First Time Abate," under which it will abate timeliness penalties if a taxpayer has timely filed returns and paid tax for the past three years. The California Legislature adopted a comparable penalty abatement program, but it is

available only for tax years beginning January 1, 2022 or later. Therefore, no relief is available to appellant on this basis.

HOLDING

Appellant is not entitled to abatement of the late-payment penalty.

DISPOSITION

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

DocuSigned by:  
*Michael Geary*  
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Michael F. Geary  
Administrative Law Judge

We concur:

DocuSigned by:  
*Erica Parker*  
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Erica Parker  
Administrative Law Judge

DocuSigned by:  
*Asaf Kletter*  
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Asaf Kletter  
Administrative Law Judge

Date Issued: 5/13/2025