



3. FTB imposed a late-payment penalty of \$723.20 because the payment due date was March 15, 2024.<sup>2</sup>
4. Appellant paid the balance due and filed a claim for refund of the late-payment penalty based on reasonable cause, which FTB denied.
5. This timely appeal followed.

### DISCUSSION

R&TC section 19132(a)(1) 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.) For a calendar year S Corporation, such as appellant, the due date for the return is March 15 following the close of the preceding year. (R&TC, § 18601(d)(1).) For the taxable year at issue, when a PTET election is made, a payment of either 50 percent of the elective tax paid for the prior taxable year or \$1,000 must be paid on or before June 15 of the applicable tax year. (R&TC, § 19904(a).) The remainder of the elective tax payment must be made on or before the due date of the original return, without regard to any extension of time for filing. (R&TC, § 19904(b).) Here, FTB properly imposed the late-payment penalty because the payment due date was the date for filing appellant's original return on March 15, 2024, and appellant did not completely satisfy its 2023 income tax and PTET liabilities until April 15, 2024, one month later.

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).) 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.*)

Appellant asserts that the late-payment penalty should be abated for reasonable cause. Specifically, appellant contends that due to the newness and complexity of the PTET, appellant was required to simultaneously prepare tax returns for the corporation and its president to determine the correct amount of the PTET payment. Appellant also asserts that there was ambiguity in FTB's instructions about the due date for the payment as appellant believed the

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<sup>2</sup> FTB also imposed a penalty of \$24.41 for the underpayment of estimated tax; however, appellant does not discuss this penalty, and OTA does not address it in this Opinion.

“due date of the original return” referred to the due date for appellant’s president’s personal income tax return.<sup>3</sup>

Appellant’s claim that the PTET is new and complex does not excuse appellant’s late payment. The calculation is simple; it is computed at the rate of 9.3 percent of appellant’s qualified net income, which is unaffected by any information on appellant’s president’s personal tax return. (R&TC, § 19900(a)(1).) On the contrary, the president’s personal tax return requires the amount shown on appellant’s return, not the reverse.


Appellant’s assertion that FTB’s instructions were ambiguous and confusing is also unavailing. Although there is no evidence in OTA’s record indicating that appellant has elected the PTET in prior years, appellant acknowledges it knew the due date for its S corporation return was March 15, 2024. A taxpayer exercising ordinary business care and prudence would have recognized that it is the entity that makes the election and pays the tax. If there were any doubt about which due date applied, an ordinarily intelligent and prudent businessperson would have further researched the issue to ensure timely payment. For the foregoing reasons, appellant has not met its burden to show reasonable cause for the late payment.

#### HOLDING

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

#### DISPOSITION

OTA sustains FTB’s action denying appellant’s claim for refund.

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Teresa A. Stanley  
Administrative Law Judge

Date Issued: 6/3/2025

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<sup>3</sup> Appellant also claims that had it been notified of the late payment sooner, it would have paid right away to minimize the penalty. OTA notes that FTB calculated the late-payment penalty for just one month. The penalty consists of 5 percent of the tax due plus 0.05 percent for each month *or fraction thereof*. (R&TC, § 19132(a)(2).) Thus, paying sooner would not have reduced the penalty.