

Regulation Section 19131 is adopted to read:

§ 19131. Timeliness Penalties.

- (a) *In general.* The following timeliness penalties, relating to either a taxpayer's failure to timely file a return on or before the original or extended due date of the return, or to timely pay tax on or before the original due date, shall be eligible for abatement under the provisions of this regulation:
 - (1) Revenue and Taxation Code section 19131, relating to failure to timely file a return;
 - (2) Revenue and Taxation Code section 19132, relating to failure to timely pay tax;
 - (3) Revenue and Taxation Code section 19172, relating to failure of a partnership to timely file a return; and
 - (4) Revenue and Taxation Code section 19172.5, relating to failure of an S corporation to timely file a return.
- (b) *Presumption of Reasonable Cause.* If a taxpayer makes a request for abatement of a timeliness penalty, reasonable cause may be presumed and a timeliness penalty specified in subsection (a) may be abated if either:
 - (1) The taxpayer has not previously been required to file a California return under the Revenue and Taxation Code; or
 - (2) (A) No prior timeliness penalties have been imposed by the Franchise Tax Board with respect to the same taxpayer, or the taxpayer's spouse if filing a joint return, in the preceding four (4) taxable years; and
 - (B) No prior timeliness penalties have been abated pursuant to this regulation for the same taxpayer, or the taxpayer's spouse if filing a joint return, in the preceding four (4) taxable years.
- (c) *Requests for Abatement.* A request for abatement under the provisions of this regulation may be made in any manner, whether written or oral, by a taxpayer or the taxpayer's duly authorized representative.
- (d) *Denial of Request for Abatement; Reasonable Cause Determination.* If a taxpayer is not entitled to relief under subsection (b), the Franchise Tax Board will treat the taxpayer's request for abatement as a request to abate the applicable penalty on the basis of reasonable cause and not due to willful neglect, and will notify the taxpayer in writing of its determination.
- (e) *Examples.* The following examples illustrate the provisions of this regulation:

Example 1. Assume Individual X filed a California personal income tax return for the 2009 taxable year after the required due date for the return and a penalty for failure to timely file is imposed. Further assume that no timeliness penalties were imposed by the Franchise Tax Board on X's accounts for the 2005, 2006, 2007 or 2008 taxable years. X then makes a request for abatement of the failure to file penalty for the 2009 taxable year under the provisions of this regulation. Because no previous timeliness penalties have been imposed by the Franchise Tax Board on X for the preceding four (4) taxable years, the timeliness penalty for failure to file will be abated for the 2009 taxable year.

Example 2. Assume the same facts as in Example 1, except that the Franchise Tax Board imposed a penalty for failure to timely pay tax on X's 2007 California taxable year. X makes a request for abatement of the failure to file penalty for the 2009 taxable year. Because a previous timeliness penalty had been imposed by the Franchise Tax Board on X within the preceding four (4) taxable years, the penalty for failure to file a 2009 tax return will not be abated under this regulation, but the penalty may be abated if the Franchise Tax Board determines that X's late filing for 2009 was due to reasonable cause and not due to willful neglect.

Example 3. Assume Partnership Y filed a California partnership return for the 2009 taxable year after the required due date for the return and a penalty for failure to timely file is imposed. Further assume that no timeliness penalties were imposed by the Franchise Tax Board on Y's accounts for the 2005, 2006, 2007 or 2008 taxable years; however, the Internal Revenue Service imposed a federal penalty for failure to file a return for Y's 2007 taxable year. Y makes a request for abatement of the failure to file penalty for the 2009 taxable year under this regulation. Because no previous timeliness penalties have been imposed by the Franchise Tax Board on Y within the preceding four (4) taxable years, the timeliness penalty for failure to file will be abated for the 2009 taxable year. Further, the fact that a federal timeliness penalty was imposed within the preceding four (4) taxable years is not relevant in determining whether the automatic abatement procedures of this regulation shall apply.

Example 4. Assume Individual Z filed a California personal income tax return for the 2009 taxable year and a penalty for failure to pay is imposed because Z failed to timely pay the amount of tax as shown on the return. Further assume that no timeliness penalties were imposed by the Franchise Tax Board on Z's accounts for the 2005, 2006, 2007 or 2008 taxable years; however, the Franchise Tax Board imposed an accuracy-related penalty for Z's 2005 California taxable year. Z makes a request for abatement of the failure to pay penalty for the 2009 taxable year. Because no previous timeliness penalties have been imposed by the Franchise Tax Board on Z within the preceding four (4) taxable years, the timeliness penalty for failure to pay will be abated for the 2009 taxable year.

Example 5. Assume the same facts as in Example 4, but further assume Z filed a California personal income tax return for the 2010 taxable year after the required due date for the return and a penalty for failure to timely file is imposed. Z makes a request for abatement of the failure to file penalty for the 2010 taxable year. Because the penalty for failure to pay tax was abated under this regulation for the 2009 taxable year,

the penalty for failure to file a 2010 return will not be abated under this regulation, but the penalty may be abated if the Franchise Tax Board determines that Z's late filing for 2010 was due to reasonable cause and not due to willful neglect.