

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of:  
**SELENA A. CHAISSON**

) OTA Case No. 18042836  
)  
) Date Issued: August 14, 2019  
)  
)  
)

**OPINION**

Representing the Parties:

For Appellant: Selena A. Chaisson

For Respondent: Eric A. Yadao, Tax Counsel III

J. LAMBERT, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Selena A. Chaisson (appellant) appeals an action by the Franchise Tax Board (respondent) in denying appellant’s claim for refund of \$5,033.71 for the 2014 tax year.

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

**ISSUE**

Whether appellant has shown reasonable cause for the late payment of tax.

**FACTUAL FINDINGS**

1. Appellant attempted to make an extension payment on April 15, 2015, for the 2014 tax year in the amount of \$118,000.
2. Thereafter, respondent issued appellant a dishonored payment notice dated May 4, 2015, advising appellant that her intended payment was returned unpaid by her financial institution and that any late payment of tax would be subject to penalties and interest.
3. On May 7, 2015, appellant made a payment of \$118,000.
4. Appellant filed her 2014 tax return on August 24, 2015.

5. Because appellant did not pay her tax by the payment deadline, respondent imposed a late payment penalty and reduced the amount of appellant's overpayment to be applied to her 2015 estimated tax.
6. Appellant filed a claim for refund stating that she resubmitted payment once she realized the payment was dishonored. Appellant stated that her account held sufficient funds and her bank had no record of an attempt by respondent to "collect" the funds.
7. Respondent denied appellant's claim and this timely appeal followed.

### DISCUSSION

R&TC section 19132 imposes a late payment penalty when a taxpayer fails to pay the amount shown as due on the return on or before the date prescribed for payment of the tax. The late payment penalty may be abated if the taxpayer can show 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).) The taxpayer bears the burden of proving reasonable cause exists. (*Appeal of Sleight* (83-SBE-244) 1983 WL 15615.) To establish reasonable cause for the late payment of tax, the 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. (*Ibid.*) The late-filing and the late payment penalties generally deal with the same questions and weigh the same evidence for purposes of making reasonable cause determinations. (*Appeal of Berolzheimer* (86-SBE-172) 1986 WL 22860.)

Appellant contends that it was respondent's error that resulted in her late payment of tax. However, appellant's payment was dishonored. Respondent provided evidence showing that appellant's April 2015 payment was dishonored because the payment originated from an impermissible account type. Ensuring that a payment is not dishonored is the responsibility of the taxpayer, as the taxpayer controls the method and source of payment, not respondent.

Furthermore, a prudent businessperson would have reviewed his or her bank account before the payment deadline to ensure that the payment was successfully transmitted. Appellant did not exercise ordinary business care and prudence in failing to notice that such a large amount, \$118,000, was not withdrawn from her account.

Appellant contends that respondent should have provided her with electronic notice of the failed payment instead of notice by mail. However, R&TC section 18416 authorizes respondent to notify taxpayers by mail. While the law permits respondent to notify taxpayers electronically

(R&TC, § 18416.5), taxpayers must elect to receive notices electronically as part of enrolling in a MyFTB account. Respondent’s records reflect that appellant did not register for her MyFTB account until after the penalty at issue and, therefore, respondent would not have notified appellant electronically of the failed payment.


Each taxpayer has a personal and non-delegable obligation to file a tax return and pay tax by the due date. (*Appeal of Boehme* (85-SBE-134) 1979 WL 4224.) As the Supreme Court held in *United States v. Boyle* (1985) 469 U.S. 241, “[i]t requires no special training or effort to ascertain a deadline and make sure that it is met.” Therefore, appellant has not shown reasonable cause for the late payment of tax due to her failure to use the proper type of financial account when attempting to pay tax.

HOLDING


Appellant has not shown reasonable cause for failing to timely pay tax.


DISPOSITION

Respondent’s action is sustained.

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Josh Lambert  
Administrative Law Judge

We concur:

DocuSigned by:  
  
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Tommy Leung  
Administrative Law Judge

DocuSigned by:  
  
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Andrew J. Kwee  
Administrative Law Judge