

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18083522
WEIPING WANG)
) Date Issued: August 12, 2019
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OPINION

Representing the Parties:

For Appellant: Andy W. Li, CPA

For Respondent: Meghan McEvilly, Tax Counsel III

Office of Tax Appeals: William J. Stafford, Tax Counsel III

N. ROBINSON, Administrative Law Judge: This appeal is made pursuant to section 19324 of the Revenue and Taxation Code (R&TC) from the action of the Franchise Tax Board (FTB) in denying appellant’s claim for refund of \$3,716.30¹ for the 2017 tax year.

Appellant waived her right to an oral hearing, and therefore, this appeal is being decided on the written record.

ISSUE

Whether appellant has shown that her late payment of tax for the 2017 tax year was due to reasonable cause.

FACTUAL FINDINGS

1. Appellant filed a timely 2017 California return on April 9, 2018, reporting a federal adjusted gross income (AGI) of \$814,186, a taxable income of \$807,990, and a total tax of \$85,158. After listing withholdings of \$17,589, appellant’s return reported a tax due of \$67,569. FTB accepted the return as filed.

¹ The amount at issue is \$3,716.30, but because appellant subsequently filed an amended return which decreased her tax liability by \$894, the late-payment penalty was adjusted accordingly, resulting in appellant receiving a credit of \$44.80.

2. Appellant alleges that on or about April 14, 2018, she attempted to make an electronic return payment in the amount of \$67,569 from her Charles Schwab brokerage account. The payment request was not processed because FTB could not debit a brokerage account.
3. Because appellant did not timely pay the tax due of \$67,569, FTB imposed a late-payment penalty of \$3,716.30 on April 20, 2018.
4. FTB later received a tax payment of \$67,569 on May 11, 2018.
5. Appellant subsequently paid the late-payment penalty in full and filed a claim for refund.
6. On July 2, 2018, FTB issued a Notice of Action (NOA), denying appellant's claim for refund.
7. FTB later processed an amended 2017 California return, which FTB had received from appellant. The amended return set forth a federal AGI of \$806,901 and a tax due of just \$66,673. FTB accepted the amended return as filed and reduced the late-payment penalty accordingly, which resulted in a credit on appellant's account of \$44.80.
8. After receiving the NOA, appellant filed this timely appeal.

DISCUSSION

R&TC section 19132 provides that a late-payment penalty is imposed when a taxpayer fails to pay the amount shown as due on the return on or before the due date of the return. 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 that both conditions existed. (*Appeal of Scanlon*, 2018-OTA-075P; *Appeal of Sleight* (83-SBE-244) 1983 WL 15615.)² To establish reasonable cause of the late payment of tax, the taxpayer must show that his/her failure to make a timely payment of the proper amount of tax occurred despite the exercise of ordinary business care and prudence. (*Id.*) The failure to timely remit the balance owed simply due to an oversight generally does not constitute reasonable cause. (*Appeal of Risser* (84-SBE-044) 1984 WL 16123.)

² FTB has not alleged and there is no evidence submitted showing that appellant acted willfully in failing to pay tax timely. Thus, we will only analyze whether appellant has shown good reasonable cause to abate the late payment penalty.

Appellant's 2017 tax payment was due on April 17, 2018. Appellant, however, made her payment late on May 11, 2018. In response, FTB imposed a late-payment penalty of \$3,716.30. Appellant is not contesting the calculation of the late-payment penalty.

The evidence shows that appellant timely requested, on April 14, 2018, that a payment of \$67,569 be made from her Charles Schwab brokerage account to pay her 2017 California tax liability. However, appellant mistakenly did not realize she could not make payment from her brokerage account. Appellant states this was the first time she used her Charles Schwab brokerage account to pay a large amount of tax owed. Appellant asserts that she thought FTB could withdraw money from her brokerage account (as would have been possible from a regular bank checking account) but did not realize that FTB could not do so until she received a letter from the Internal Revenue Service (IRS) indicating that her federal tax payment did not get processed.³ She contends that she made an "honest mistake" by indicating the wrong type of account. Specifically, she asserts that it "wasn't clear that [she] should not use [her] brokerage account number" She further asserts that after she was notified of the problem, she immediately called FTB and took additional steps to submit the required payment, which was successfully deposited on May 11, 2018.

Appellant states that it "wasn't clear that [she] should not use [her] brokerage account number" Here, an ordinary intelligent business person would have taken steps to clearly understand any limitations the payor and/or payee may have, including the acceptable types of accounts from which an electronic payment could be made. Appellant, however, has not provided any evidence of the steps she took (if any) to investigate whether FTB would be able to withdraw funds from appellant's brokerage account. In addition, we note that the efforts appellant took to make payment after her initial attempted payment was not processed fail to establish reasonable cause for the late payment of tax because appellant, as already indicated above, has not provided any evidence of the steps she took to investigate whether FTB would be able to withdraw funds from appellant's brokerage account.

In sum, appellant has not produced evidence to show there was reasonable cause for paying her tax late.

³The appeal record indicates the IRS abated the corresponding federal late-payment penalty due to appellant's good filing and payment history; however, California is authorized to abate a late payment penalty only if reasonable cause is shown and a history of timely payments is not reasonable cause. (*Appeal of Scanlon, supra.*)

HOLDING

Appellant has not shown that her late payment of tax for the 2017 tax year was due to reasonable cause.

DISPOSITION

FTB's denial of appellant's claim for refund is sustained.

DocuSigned by:

Neil Robinson

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Neil Robinson
Administrative Law Judge

We concur:

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Richard Tay

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Richard Tay
Administrative Law Judge

DocuSigned by:

Tommy Leung

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Tommy Leung
Administrative Law Judge