

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 18093835
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NIKOLAS STAVROPOULOS AND) Date Issued: October 1, 2019
PATRINA STAVROPOULOS)
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OPINION

Representing the Parties:

For Appellants: Andrea Koh, CPA

For Respondent: Paige Chang, Graduate Student Assistant

For Office of Tax Appeals: Tom Hudson, Tax Counsel III

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324,¹ appellants Nikolas Stavropoulos and Patrina Stavropoulos appeal from the action of the Franchise Tax Board (FTB or respondent) denying their claim for refund in the amount of \$1,000.88 for the 2018 taxable year.

Appellants waived their right to an oral hearing, so this matter is being decided based on the written record.

ISSUE

Did appellants establish reasonable cause to abate the dishonored payment penalty?

FACTUAL FINDINGS

1. On January 20, 2018, appellants were victims of a crime involving the theft of appellants' checkbook and other belongings. As proof, appellants submit a copy of the police report from the Police Department of Weston, Massachusetts. Appellants assert that they closed their checking account in response to this theft.

¹ All statutory references are to laws in effect for the 2018 taxable year.

2. On June 18, 2018, appellants attempted to make an electronic payment of \$50,000 for their estimated taxes for the 2018 taxable year. According to FTB records, this payment was not honored because there were insufficient funds in the bank account used by appellants.
3. On July 5, 2018, the FTB issued a Notice of State Income Tax Due showing a balance due of \$1,000.88, with an “Other Liability Code” for a “dishonored payment,” and with a July 20, 2018 payment deadline. Appellants subsequently paid their estimated tax of \$50,000 on August 8, 2018, and then paid the dishonored payment penalty of \$1,000.88 on August 13, 2018.
4. On August 13, 2018, appellants filed their refund claim for \$1,000.88, asserting that they had reasonable cause for the dishonored payment. Appellants explained that they inadvertently attempted to make their first \$50,000 payment with the bank account that they had recently closed as a result of the theft of their checkbook and wallet. Appellants asserted that they have a history of compliance and they are current in all of their tax filings.
5. On August 22, 2018, FTB denied appellants’ claim for refund, stating that “the information you provided in your letter does not constitute reasonable cause for abatement of the Dishonored Payment Penalty.”

DISCUSSION

Internal Revenue Code (IRC) section 6657 provides that whenever “any instrument in payment [of a tax liability] is not duly paid, in addition to any other penalties provided by law, there shall be paid as a penalty by the person who tendered such instrument . . . an amount equal to 2 percent of the amount of such instrument..... ” This penalty, referred to as the “dishonored payment penalty,” will not be applied, however, “if the person tendered such instrument in good faith and with reasonable cause to believe that it would be duly paid.” By R&TC section 19134, California conforms to the provisions of IRC section 6657.

As with other penalties containing a “reasonable cause” exception, the taxpayer bears the burden of proving the existence of reasonable cause. (See generally *Appeal of M.B. and G.M. Scott* (82-SBE-249) 1982 WL 11906.) The taxpayer must provide credible and competent evidence to support the claim of reasonable cause; otherwise, the penalty cannot be abated. (*Appeal of Winston R. Schwyhart* (75-SBE-035) 1975 WL 3519.) In the context of a dishonored

payment penalty, taxpayers must prove that they “tendered [the dishonored] instrument in good faith and with reasonable cause to believe that it would be duly paid.”

In this appeal, the dishonored payment penalty was properly imposed and appellants did not show reasonable cause that would allow abatement thereof. Although appellants were victims of a crime, the crime occurred nearly five months prior to their attempted payment. After they were victimized, appellants took affirmative action to close their bank account, but they did not explain why it was reasonable for them to believe that they could continue to write checks on their closed account. Under these circumstances, we cannot conclude that appellants exercised ordinary business care and prudence which would satisfy the reasonable cause standard. Prior to tendering payment, appellants should have verified that they were using the proper account and that the account contained sufficient funds to make the payment. A taxpayer error attributable to an oversight, even an innocent oversight, generally will not constitute reasonable cause for penalty abatement purposes. (See generally *Appeal of Sidney & Ellen Friedman*, 2018-OTA-077P; *Appeal of J. Ray Risser* (84-SBE-044) 1984 WL 16123.) Accordingly, we hold that appellants did not satisfy their burden of proving reasonable cause.

The amount of the penalty is set by statute, and the Office of Tax Appeals has no legal authority to abate it unless reasonable cause is shown. The penalty cannot be abated based on the appellants’ history of tax compliance, no matter how commendable that may be.²

² We note that Section 20.1.1.3.6.1 of the Internal Revenue Manual allows the Internal Revenue Service (IRS) to administratively waive the *federal* dishonored payment penalty, under the IRS’s First Time Abate program, for *federal* taxpayers who have no prior penalties or taxes due. There is no equivalent provision in California law. The Office of Tax Appeals has no authority to waive this California penalty on the basis of a taxpayer’s good filing history.

HOLDING

Appellants did not establish reasonable cause to allow the abatement of the R&TC section 19134 dishonored payment penalty.

DISPOSITION

Respondent's action in denying appellants' claim for refund is sustained.

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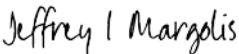
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Tommy Leung

Administrative Law Judge

We concur:

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Jeffrey I. Margolis

Administrative Law Judge

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Michael F. Geary

Administrative Law Judge