

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:

**S. CHIEM AND
T. CHIEM**

) OTA Case No. 21027195
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OPINION

Representing the Parties:

For Appellants: Hayden Hargrove, Tax Appeals Assistance Program (TAAP)¹

For Respondent: Corina Johnson, Graduate Student Assistant

N. DANG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, S. Chiem and T. Chiem (appellants) appeal an action by the Franchise Tax Board (respondent) denying appellants’ refund claim of \$1,318.29² for the 2019 tax year.

We decide this matter based on the written record because appellants waived their right to an oral hearing.

ISSUES

Whether the underpayment of estimated tax penalty, the late-payment penalty, and interest should be abated due to reasonable cause.

FACTUAL FINDINGS

1. Appellants failed to make sufficient estimated tax payments for the 2019 tax year.
2. One day prior to the payment deadline, on July 14, 2020, appellants submitted an electronic payment for their 2019 tax liability through respondent’s Web Pay system.

¹ Appellants filed their opening brief, and Tianjiao Wang of TAAP filed appellants’ reply brief.

² This amount represents the sum of the late-payment penalty, underpayment of estimated tax penalty, and interest as stated on respondent’s billing notice dated November 12, 2020. However, appellants paid their 2019 tax liability on November 17, 2020, and during the five-day intervening period between these two dates the late-payment penalty and interest had increased accordingly. Therefore, appellants’ refund claim does not include the entire penalty and interest amount respondent assessed for the 2019 tax year.

3. Appellants' electronic payment was dishonored because the bank account number they had provided with this payment was invalid.
4. Because appellants failed to make sufficient estimated tax payments and timely pay their tax liability, respondent imposed an underpayment of estimated tax penalty, a late-payment penalty, and applicable interest.
5. After receiving several billing notices from respondent, appellants paid the balance due and filed a refund claim seeking penalty and interest relief based upon reasonable cause.³

DISCUSSION

Appellants assert that penalty and interest relief is warranted because they intended to timely pay their 2019 tax liability on July 14, 2020. Appellants further contend that, as small restaurant owners, they were significantly impacted by the COVID-19 pandemic, and severe plumbing issues occurring at their restaurant in June and July of 2020. Taken together, appellants argue that these events resulted in substantial difficulties and stress which prevented appellants from realizing that their July 14, 2020 electronic payment had been dishonored. Appellants state that they paid the liability as soon as they received notice from respondent that there was a balance due for the 2019 tax year.

As a matter of law, appellants' reasonable cause argument is unavailing with respect to interest and the underpayment of estimated tax penalty. There is simply no reasonable cause exception to the imposition of interest. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.) Likewise, there is no general reasonable cause exception to the understatement of estimated tax penalty. (*Appeal of Mazdyasni*, 2018-OTA-049P.) Reasonable cause relief from this penalty is available only under limited circumstances, such as where: (1) the taxpayer retired after reaching age 62; or (2) became disabled in the taxable year for which the estimated tax payments were required to be made or in the previous year. (R&TC, § 19136.1 incorporating by reference Internal Revenue Code (IRC), § 6654(e)(3)(B).) Appellants have not alleged, nor does the evidence establish, that either of these conditions have been met. Thus, the reasonable cause exception to the understatement of estimated tax penalty is not applicable here.⁴

³ In other words, appellants argue that their failure to timely pay occurred despite the exercise of ordinary business care and prudence.

⁴ Regardless, we note appellants failed to provide any explanation for why they failed to make sufficient estimated tax payments.

Regarding the late-payment penalty, it may be abated upon a showing of reasonable cause. (R&TC, § 19132(a) [the late-payment penalty shall not apply if the failure to timely pay is due to reasonable cause and not due to willful neglect].) Respondent’s imposition of the penalty is presumed to be correct and the taxpayer bears the burden of proving reasonable cause. (*Appeal of Triple Crown Baseball LLC*, 2019-OTA-025P.) This standard requires the taxpayer to establish that the failure to timely pay occurred despite the exercise of ordinary business care and prudence. (*Ibid.*) The taxpayer must show that reasonable cause existed from the due date of the payment to the time the payment is actually made. (*Appeal of Moren, supra.*) Unsupported assertions are insufficient to establish reasonable cause. (*Appeal of Scanlon*, 2018-OTA-075P.)

After reviewing the evidentiary record, we conclude that two well-established legal principles preclude a finding of reasonable cause.

The first, is that “[t]he failure to timely remit the balance due on a tax liability caused by an oversight does not, by itself, constitute reasonable cause.” (*Appeal of Friedman*, 2018-OTA-077P.) Here, appellants failure to timely pay was solely due to an oversight on their part in entering the wrong bank account number whilst submitting their July 14, 2020 electronic payment. Appellants admit that, afterwards, they failed to take any steps to verify that this electronic payment had been successful. These facts evidence a lack of due diligence on appellants’ part. Thus, appellants’ attempt to submit a timely, but ultimately unsuccessful electronic payment does not constitute reasonable cause.

While appellants argue they were prevented from verifying the success of this payment, the reasons they provided are insufficient to show that they acted with ordinary business care and prudence. We have consistently held that where the difficulties experienced by taxpayers simply caused them to “sacrifice the timeliness of one aspect of their affairs to pursue other aspects, the taxpayers must bear the consequences of that choice. The taxpayers’ selective inability to perform tax obligations, while participating in regular business activities, does not establish reasonable cause.” (*Appeal of Head and Feliciano*, 2020-OTA-127P.) We find this principle applies squarely to appellants’ situation. Without discounting the difficulties and hardships appellants experienced as small restaurant owners, appellants did not exercise the requisite level of care when they focused on addressing the problems at their restaurant to the exclusion of their


duty to timely pay the taxes owed. Therefore, we conclude that appellants have failed to establish reasonable cause to abate the late-payment penalty.

HOLDING

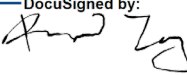
The underpayment of estimated tax penalty, the late-payment penalty, and interest should not be abated due to reasonable cause.


DISPOSITION

We sustain respondent’s action to deny appellants’ refund claim.

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Nguyen Dang
Administrative Law Judge

We concur:

DocuSigned by:

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Richard Tay
Administrative Law Judge

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Keith T. Long
Administrative Law Judge

Date Issued: 7/8/2021