

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

In the Matter of the Appeal of:

**L. LIAN AND**  
**J. LAI**

) OTA Case No. 21027205  
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**OPINION**

Representing the Parties:

For Appellants:

L. Lian  
J. Lai  
Douglas H. Radtke, CPA

For Respondent:

Eric R. Brown, Tax Counsel III

N. DANG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, L. Lian and J. Lai (appellants) appeal an action by the Franchise Tax Board (respondent) denying their refund claim for the 2019 tax year.

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

**ISSUE**

Whether the late-payment penalty should be abated due to reasonable cause.

**FACTUAL FINDINGS**

1. On July 15, 2020, July 16, 2020, and July 24, 2020, appellants submitted three electronic payments to respondent for the 2019 tax year. All these payments were dishonored.
2. After the July 15, 2020 payment deadline had passed, on August 3, 2020, appellants successfully paid their 2019 tax liability.
3. Consequently, respondent imposed a \$998.69 late-payment penalty and applicable interest.
4. Appellants paid the amount due and filed a refund claim seeking penalty abatement based on reasonable cause.

5. Respondent issued a Notice of Action denying appellant's refund claim in the amount of \$907.90.<sup>1</sup>

### DISCUSSION

The late-payment penalty shall not apply if the failure to pay the tax on or before the prescribed deadline was due to reasonable cause and not willful neglect. (R&TC, § 19132(a).) The standard of reasonable cause requires the taxpayer to establish that the failure to timely pay occurred despite the exercise of ordinary business care and prudence. (*Appeal of Triple Crown Baseball LLC*, 2019-OTA-025P.)

Respondent's imposition of the penalty is presumed to be correct, and taxpayers bear the burden of proving reasonable cause. (*Appeal of Triple Crown Baseball LLC*, *supra*.) Unsupported assertions are insufficient to establish reasonable cause. (*Appeal of Scanlon*, 2018-OTA-075P.)

Appellants contend that the penalty should be abated because their failure to timely pay was due to circumstances outside of their control. Appellants assert that they initially believed respondent's Web Pay system failed to process their first, timely payment made on July 15, 2020. Accordingly, appellants submitted a second electronic payment to respondent the following day. A few days later, when appellants discovered that their first payment had been processed by respondent, they instructed their bank to cancel the second payment to avoid an overdraft of their account. Despite these instructions, appellants assert that their bank erroneously cancelled both payments. Upon discovering this error, appellants contend that they immediately submitted another electronic payment.

Appellants have not provided any evidence to support their assertion that their bank was responsible for appellants' timely July 15, 2020 electronic payment being dishonored. There is no evidence indicating the cause for appellants' first three payments being dishonored.<sup>2</sup> Thus, we are unable to verify the credibility of appellants' contentions or determine the cause of appellants' late-payment.

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<sup>1</sup> It is unclear from the record why this amount differs from the penalty amount imposed by respondent. Nevertheless, respondent concedes that if penalty abatement is warranted the amount of appellants' refund would be \$998.69, plus applicable interest.

<sup>2</sup> We note that appellants have also failed to explain why the third, July 24, 2020 electronic payment was dishonored.

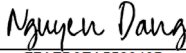
Accordingly, we find that appellants have not met their burden of establishing reasonable cause warranting penalty abatement.

HOLDINGS

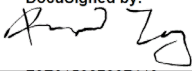
The late-payment penalty should not be abated.


DISPOSITION

We sustain FTB’s action denying appellants’ refund claim.

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Nguyen Dang  
Administrative Law Judge

We concur:

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Richard Tay  
Administrative Law Judge

DocuSigned by:  
  
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Andrew Wong  
Administrative Law Judge

Date Issued: 7/14/2021