

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
D. TAYLOR

) OTA Case No. 21017128
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OPINION

Representing the Parties:

For Appellant: Troy R. Barnett, CPA

For Respondent: Eric R. Brown, Tax Counsel III

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, D. Taylor (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$3,158.83¹ for the 2020 taxable year.

Appellant waived his right to an oral hearing; therefore, this matter is being decided based on the written record.

ISSUE

Whether appellant has demonstrated reasonable cause to abate the dishonored payment penalty.

FACTUAL FINDINGS

1. On July 15, 2020, appellant remitted three estimated tax payments, \$154,000, \$67,500, and \$90,000; the \$154,000 was attempted by appellant personally (via FTB’s Web Pay system) and was dishonored, while the other two payments were made by his tax preparer (via E-File/Telefile) and were accepted.
2. Subsequently, FTB imposed a dishonored payment penalty on appellant for the \$154,000 dishonored payment.

¹ This amount consists of a dishonored payment penalty of \$3,080, plus interest. Interest is not separately contested on appeal and will be refunded only if the penalty amount is abated.

3. Appellant paid the dishonored payment penalty and filed a claim for refund thereof.
4. FTB denied the claim.

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 is often referred to as the “dishonored payment penalty.” IRC section 6657 states that the dishonored payment penalty “shall not apply if the person tendered such instrument in good faith and with reasonable cause to believe that it would be duly paid.”² The federal penalty is incorporated into California law by R&TC section 19134, which specifically states that it is also applicable to payments made by credit card or electronic funds transfer. (R&TC, § 19134(b).) As relevant here, the amount of the penalty is 2 percent of the amount of the payment. (IRC, § 6657.)

As with other penalties containing a “reasonable cause” exception, the taxpayer bears the burden of proving the existence of reasonable cause. (See *Appeal of Xie*, 2018-OTA-076P.) The taxpayer must provide credible and competent evidence to support the claim of reasonable cause; otherwise, the penalty cannot be abated. (*Ibid.*) The taxpayer bears the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Appeal of Friedman*, 2018-OTA-077P.) In the context of a dishonored payment penalty, the taxpayer must prove that he or she “tendered [the dishonored] instrument in good faith and with reasonable cause to believe that it would be duly paid.” (IRC, § 6657.)

Appellant contends that his estimated tax payments were timely made and that the dishonored payment was a duplicate remittance caused by a miscommunication between himself and his tax preparer. While this miscommunication might explain how a duplicate payment was made, it does not constitute reasonable cause and it does not account for why appellant’s financial institution dishonored the \$154,000 payment. For example, the record does not reveal whether a stop payment was placed on the \$154,000 transaction, the timing of the three July 15, 2020 payments, or whether all three payments were charged to the same account. Under

² Although IRC section 6657 does not define “reasonable cause,” when the same terms are used to describe the basis for relief of other penalties, it is appropriate to look to cases that discuss those penalties for guidance. (*Gregory v. U.S.* (6th Cir. 1999) 178 F.3d 1294, 1999 WL 220127 [unpublished].)


these circumstances, we cannot conclude that appellant exercised ordinary business care and prudence which would satisfy the reasonable cause standard. Accordingly, we hold that appellant did not satisfy his burden of proving reasonable cause.

HOLDING


Appellant has not demonstrated reasonable cause to abate the dishonored payment penalty.


DISPOSITION

FTB’s action in denying appellant’s claim for refund is sustained.

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Tommy Leung
Administrative Law Judge

We concur:

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John O. Johnson
Administrative Law Judge

DocuSigned by:

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Michael F. Geary
Administrative Law Judge

Date Issued: 8/11/2021