

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
GOLDBRECHT, INC.

) OTA Case No. 21017119
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OPINION

Representing the Parties:

For Appellant:

David L. Nadel, CPA

For Respondent:

Eric R. Brown, Tax Counsel III

D. CHO, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Goldbrecht, Inc. (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$4,147.20 for the 2019 tax year. Appellant waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

ISSUE

Whether appellant has established reasonable cause for failing to remit a payment by electronic funds transfer (EFT) pursuant to R&TC section 19011.

FACTUAL FINDINGS

1. Appellant was required to make payments via EFT beginning on February 7, 2016.
2. On March 11, 2020, appellant electronically filed its 2019 California S Corporation Franchise or Income Tax Return.
3. On March 15, 2020, respondent received appellant’s 2019 tax payment via printed check.
4. Respondent imposed an EFT penalty of \$4,147.20.
5. Appellant paid the EFT penalty through respondent’s Web Pay system and then filed a claim for refund.

6. Respondent denied the claim for refund.
7. This timely appeal followed.

DISCUSSION

R&TC section 19011 requires certain corporations to submit their payments electronically or be subject to a mandatory EFT penalty of 10 percent. An EFT means “any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape, so as to order, instruct, or authorize a financial institution to debit or credit an account.” (R&TC, § 19011(f)(1).) R&TC section 19011(c) provides that a taxpayer that does not comply with the EFT requirement shall pay a penalty of 10 percent of the amount paid, unless it is shown that the failure to make the payment as required was due to reasonable cause and was not the result of willful neglect.

Although R&TC section 19011 does not specify what circumstances will establish “reasonable cause” or a lack of “willful neglect,” the same terms are used to describe the bases for relief of other penalties (e.g., the late-filing and late-payment penalties of R&TC sections 19131 and 19132, respectively), and it is appropriate to look to cases that discuss those penalties for guidance. (*Appeal of Porreca*, 2018-OTA-95P.) To demonstrate reasonable cause in the context of a late-filing penalty, a taxpayer must show that the failure to file a timely return occurred despite the exercise of ordinary business care and prudence. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.) The failure to make a timely filing of a tax return is not excused by a taxpayer’s reliance on an agent, and such reliance is not “reasonable cause.” (*United States v. Boyle* (1985) 469 U.S. 241, 252;¹ see also *Appeal of Boehme* (85-SBE-134) 1979 WL 4224 [reliance on an agent is not considered to be “reasonable cause” for failing to timely file a return].)

There is no dispute that appellant was required to make the payment at issue by EFT, which appellant did not do. In addition, there is no dispute as to the calculation of the penalty amount. Instead, appellant is requesting abatement of the penalty based on reasonable cause and a lack of willful neglect. Appellant explains that its tax preparer was unable to make the

¹ Because the relevant language of R&TC section 19131 pertaining to the reasonable cause exception is patterned after Internal Revenue Code section 6651, federal courts’ interpretation of the “reasonable cause” standard is persuasive authority in determining the proper application of this California statute. (See *Andrews v. Franchise Tax Bd.* (1969) 275 Cal.App.2d 653, 658.)

payment by EFT due to problems with the tax preparer's software. Appellant's tax preparer stated that he tried many different possible solutions to fix the software error but was unable to do so. In addition, neither appellant nor its tax preparer was able to utilize respondent's Web Pay system to make the payment online. Appellant further states that this entire situation was exacerbated by the beginning of the coronavirus pandemic and a transition to working remotely. Appellant's tax preparer stated that he was overwhelmed with the volume of client responsibilities. In addition, appellant's tax preparer further stated that it was impossible to reach anyone at respondent's call center due to long wait times. As a result, appellant indicated that it believed that it had no choice but to send in a paper check to make its timely payment of taxes. Based on the foregoing, appellant argues that it has reasonable cause to abate the EFT penalty.

Although appellant provided evidence that its tax return preparer encountered a software error on March 10 and 11, 2020, that prevented appellant from paying its tax liability via EFT, appellant has not provided any additional documentary evidence to indicate what other steps appellant took to try and pay its tax liability via EFT. Instead, appellant offers only unsupported allegations such as "both taxpayer and accountants [sic] effort to gain access to [respondent's] Webpay system failed." This statement does not indicate what steps appellant took to try and gain access to the Web Pay system. In addition, this statement does not elaborate on appellant's attempts (if any) to resolve the error that appellant and its accountant had in trying to gain access to the Web Pay system. Similarly, appellant stated that it was unable to contact respondent due to long wait times, but appellant has not provided any phone records, contemporaneous notes indicating the dates and times of any phone calls, emails to respondent, or any other evidence that would indicate any attempts made to contact respondent. Instead, appellant has only provided conclusory statements without any supporting documentation, and unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof.² (*Appeal of GEF Operating, Inc., supra.*) Lastly, appellant states that its return preparer was overwhelmed with deadlines and had difficulties in transitioning to working remotely due to COVID-19. However, if the difficulties caused the taxpayer to sacrifice the timeliness of one aspect of their affairs to pursue other aspects, the taxpayer must bear the consequences of that choice. (*Appeal of Head and*

² The applicable burden of proof is by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(c).)

Feliciano, 2020-OTA-127P.) The taxpayer’s selective inability to perform tax obligations does not establish reasonable cause. (*Ibid.*) Therefore, we find that appellant has not established that it exercised ordinary business care and prudence in failing to make its payment by EFT.

HOLDING

Appellant has not established reasonable cause for failing to remit its payment by EFT pursuant to R&TC section 19011.

DISPOSITION

Respondent’s action is sustained.

DocuSigned by:
Daniel Cho
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Daniel K. Cho
Administrative Law Judge

We concur:

DocuSigned by:
Alberto T. Rosas
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Alberto T. Rosas
Administrative Law Judge

DocuSigned by:
Keith T. Long
DC88A60D8C3E442...
Keith T. Long
Administrative Law Judge

Date Issued: 10/26/2021