

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

In the Matter of the Appeal of: ) OTA Case No. 21037523  
R. BAKER AND )  
R. BAKER )  
\_\_\_\_\_ )

**OPINION**

Representing the Parties:

For Appellants: Yoo Hee Shin, Tax Appeals Assistance Program (TAAP)<sup>1</sup>

For Respondent: Reed Schreiter, Tax Counsel IV

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, R. Baker and R. Baker (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$508.45, plus applicable interest, for the 2019 taxable year.

Appellants waived the right to an oral hearing; therefore, we decide the matter based on the written record.

**ISSUE**

Have appellants established that their late payment of tax was due to reasonable cause?<sup>2</sup>

<sup>1</sup> Appellants filed an opening brief. Thereafter, Connor E. McGettigan of TAAP filed a reply brief on appellants’ behalf. Yoo Hee Shin of TAAP filed appellants’ additional reply brief.

<sup>2</sup> Appellants dispute only the interest paid from November 23, 2020, through January 22, 2021. On appeal, FTB agrees to abate that portion of the interest, reducing interest from \$172.25 to \$123.57. We do not address interest further.

### FACTUAL FINDINGS

1. Appellants filed a timely 2019 California Resident Income Tax Return on May 5, 2020. On the same day, appellants attempted to make a payment using FTB's online payment system (Web Pay). Appellants' bank did not honor the payment.
2. Appellants did not make any further attempts to pay their 2019 taxes prior to the July 15, 2020 due date.<sup>3</sup>
3. Appellants attempted to pay two more times on October 5, 2020, and November 6, 2020, both of which were dishonored. Appellants successfully made a payment on November 23, 2020.<sup>4</sup>
4. FTB assessed a late-filing penalty of \$508.45, plus applicable interest, which appellants paid. Appellants requested a refund of the penalties and interest, which FTB denied.
5. Appellants filed this timely appeal.
6. On appeal, appellants submitted documentation showing that appellant-husband is considered totally and permanently disabled due to military service-connected injuries effective January 3, 2018. Appellants also submitted a letter from a physician, dated August 26, 2016, stating that appellant-husband was a current patient of the physician and was being seen for arthritis of both wrists.
7. On appeal, FTB agreed to reduce the applicable interest from \$172.25 to \$123.57.

### DISCUSSION

R&TC section 19001 provides that the personal income tax “shall be paid at the time and place fixed for filing the return (determined without regard to any extension of time for filing the return).”<sup>5</sup> R&TC section 19132 provides that a late-payment penalty shall be imposed when a taxpayer fails to pay the amount shown as due on the return on or before the due date of the return. The late-payment penalty may be abated if a taxpayer shows that the failure to make a

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<sup>3</sup> Due to COVID-19, FTB postponed the filing and payment deadlines for the 2019 taxable year to July 15, 2020.

<sup>4</sup> FTB's records reflect that a payment was made on November 6, 2020, and, therefore, refunded the payment. Thereafter, the bank dishonored the November 6, 2020 payment, leaving an outstanding balance owed. Appellants again paid the balance due on January 22, 2021. FTB used the earlier November 23, 2020 payment date to calculate the amount of the late-payment penalty.

<sup>5</sup> As noted, *ante*, the payment due date was postponed to July 15, 2020.

timely payment of tax was due to reasonable cause and not due to willful neglect. (R&TC, § 19132(a).) To establish reasonable cause for a late payment of tax, a taxpayer must show that his or her failure to make a timely payment of the proper amount of tax occurred despite the exercise of ordinary business care and prudence. (*Appeal of Scanlon*, 2018-OTA-075P.) Illness or other personal difficulties may be considered reasonable cause if the taxpayers present credible and competent proof that they were continuously prevented from filing a tax return. (*Appeal of Head and Feliciano*, 2020-OTA-127P.) When taxpayers allege reasonable cause based on an incapacity due to illness, the duration of the incapacity must approximate that of the tax obligation deadline. (*Ibid.*)

Appellants allege that they had reasonable cause for the late payment of tax for 2019. They assert that appellant-husband was the financial manager for the family, and that he was continuously 100 percent disabled during the relevant time, and that the dishonored payment attempts were due to appellant-husband's wrist disability. Appellants further contend that appellant-wife was "overwhelmed with taking care of Appellant-Husband and their homemaking and was never in a position, nor had the time or energy, to handle their tax affairs."

Appellants have failed to establish reasonable cause for their late payment of tax. The letter provided by the Department of Veterans Affairs indicates that appellant-husband is considered 100 percent disabled since January 3, 2018. It does not, however, state what the disability or disabilities are and how they contributed to an ongoing inability to make a timely payment. The letter from appellant-husband's physician also fails to explain how being under a physician's care in 2016 caused him to be unable to make a timely payment of tax in 2020. On the contrary, appellants acknowledged that appellant-husband was able to make timely payments in prior years even though he had been deemed 100 percent disabled in 2018 and had been under a physician's care in 2016.

Moreover, appellants have not explained how appellant-husband's injuries "caused the error on May 5, 2020." The record only shows that appellants did attempt to make a payment and that the bank dishonored that payment. That indicates that appellant-husband's medical condition did not prevent him from paying, but that he either made an entry error or that funds were unavailable. When, as here, the evidence shows that the failure to make a timely payment was due to an oversight and a lack of diligence in checking their bank account to ensure the

payment was made, such oversight does not constitute reasonable cause. (*Appeal of Friedman*, 2018-OTA-077P.)

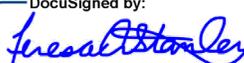
Similarly, appellant-wife's failure to take steps to ensure that the tax payment was made on time warrants a finding that reasonable cause has not been established. The record does not support appellants' contentions that they were both continuously prevented from making a timely payment for 2019. Appellants were able to timely pay in prior years, and their tax return reports that they were able in 2019 to make mortgage payments, to make property tax payments, to sell shares of stock, and to earn substantial income, all after the date appellant-husband was allegedly too disabled to meet their tax obligations. Furthermore, appellants filed their 2019 tax return on time, indicating that they were able to complete that task in a timely fashion. The single thing appellants failed to do was to cross-check whether their attempted payment was received by FTB. When difficulties simply cause 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 Triple Crown Baseball LLC*, 2019-OTA-025P.)

HOLDING

Appellants have not established that their late payment of tax was due to reasonable cause.

DISPOSITION

As conceded by FTB, interest is reduced to \$123.57. In all other respects, we sustain FTB’s action.

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Teresa A. Stanley  
Administrative Law Judge

We concur:

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Sheriene Anne Ridenour  
Administrative Law Judge

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Elliott Scott Ewing  
Administrative Law Judge

Date Issued: 11/15/2021