

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:

**T. JISSER AND
E. JISSER**

) OTA Case No. 21017104
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OPINION

Representing the Parties:

For Appellants:

Jeffrey C. Janda, CPA

For Respondent:

Ashita Mohandas, Graduate Student
Assistant

For Office of Tax Appeals:

Rosa Lee Schwarz, Graduate Student
Assistant

E. S. EWING, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, T. Jisser and E. Jisser (appellants) appeal an action by the Franchise Tax Board (respondent) denying appellants’ claim for refund of \$18,699.78 for the 2019 tax year.

Appellants waived their right to an oral hearing; therefore, the matter is being decided based on the written record.

ISSUE

Whether appellants have established reasonable cause for the late payment of tax for the 2019 tax year.

FACTUAL FINDINGS

1. Appellants filed a timely 2019 California Tax Return, reporting total tax due of \$339,996. Appellants self-assessed an underpayment of estimated tax penalty of \$11,929, with a total amount due on their return of \$351,925.

2. On July 20, 2020, appellants made an untimely payment of \$351,925 (five days after their payment was due).¹
3. Because appellants did not make their payment before the due date of July 15, 2020, respondent sent a State Income Tax Balance Due Notice that imposed a late payment penalty of \$18,699.78 and an underpayment of an estimated tax penalty of \$11,929, plus applicable interest.² In response, appellants remitted payments of \$19,103.34 on October 12, 2020, and \$47.61 on December 14, 2020.³
4. Appellants filed a claim for refund in the amount of \$18,699.78, requesting abatement of the late payment penalty based on reasonable cause.⁴
5. Respondent denied the claim for refund on the grounds that appellants did not show reasonable cause to abate the late payment penalty.
6. Appellants filed this timely appeal.

DISCUSSION

R&TC section 19132 imposes a late payment penalty when a taxpayer fails to pay the amount shown as due on the return by the date prescribed for the payment of the tax. Generally, the date prescribed for the payment of the tax is the due date of the return without regard to extensions of time for filing. (R&TC, § 19001.) Here, respondent properly imposed the late payment penalty because the payment due date was July 15, 2020, and appellants did not pay the full tax liability until July 20, 2020, five days after the due date. There is no dispute that appellants failed to timely pay the 2019 tax liability on or before the payment deadline, July 15, 2020. However, appellants assert that there is reasonable cause to abate the late payment penalty.

The late payment penalty may be abated if the taxpayer shows that the failure to make a timely payment of tax was due to reasonable cause and was not due to willful neglect. (R&TC,

¹ Due to the COVID-19 pandemic, respondent postponed the due date for paying taxes for the 2019 tax year from April 15, 2020, to July 15, 2020.

² The underpayment of estimated tax penalty in the amount of \$11,929 was already paid by appellants at the time the State Income Tax Balance Due Notice was issued.

³ Both of these payments were related to the late payment penalty, plus applicable interest.

⁴ Appellants did not claim a refund for, or appeal, the imposition of the underpayment of estimated tax penalty. Therefore, we do not further discuss that penalty.

§ 19132(a)(1).) To establish reasonable cause, the taxpayer must show that the failure to file a timely return occurred despite the exercise of ordinary business care and prudence, meaning that such cause existed as would prompt an ordinarily prudent businessperson to have so acted under similar circumstances. (*Appeal of Friedman*, 2018-OTA-077P.) A taxpayer making an untimely payment of tax due to an oversight is not, by itself, reasonable cause to abate a late payment penalty. (*Ibid.*)

Here, appellants assert there is reasonable cause to abate the penalty because their failure to pay the 2019 tax liability on time was due to an “inadvertent misunderstanding between the taxpayers and their tax preparer on the procedure for submitting their 2019 state tax payment.”⁵ Appellants contend that they had previously relied on automatic withdrawals for prior tax years.⁶ Appellants further contend that they did not understand they were required to make payment electronically through the Franchise Tax Board’s website for the 2019 tax year payment. Appellants assert that they only became aware of the oversight when appellants noticed that the funds were still in their bank account after July 15, 2020. Once they became aware of the oversight, they immediately made the electronic payment just five days later, on July 20, 2020. Appellants further assert that they did not act with willful neglect or intentional disregard in believing that their taxes would be automatically withdrawn from their account on or before July 15, 2020.

While there was a misunderstanding between appellants and their tax preparer about how the payment would be made, these facts do not establish reasonable cause warranting abatement of the late payment penalty because a taxpayer making an untimely payment of tax due to an oversight is not, by itself, reasonable cause to abate a late payment penalty. (*Appeal of Friedman, supra.*) Moreover, every taxpayer has a personal, non-delegable obligation to pay

⁵ Appellants state that “the taxpayers were required to make this payment electronically through the Franchise Tax Board website by July 15, 2020. Neither the taxpayers nor the tax preparer realized this until the taxpayers noticed that the funds were still in their bank account after July 15, 2020. The taxpayers contacted the tax preparer’s office on July 17, 2020, to discuss and resolve this. However, their offices were closed until July 20, 2020. Upon his return to the office, the tax preparer contacted the Franchise Tax Board to confirm that in fact the 2019 tax liability had not been paid. The tax preparer’s administrative personnel immediately went onto the Franchise Tax Board website and electronically made the payment from the taxpayers’ bank account.”

⁶ According to appellants’ representative, “[o]n occasion, the state tax payments have been automatically withdrawn from the taxpayers’ bank account as part of the electronic filing of their tax return. The option must be setup through our tax processing software prior to electronically filing the tax return.”

taxes when due. (*United States v. Boyle* (1985) 469 U.S. 241, 251-252.) Accordingly, we find that appellants have not established reasonable cause to abate the late payment penalty.

Finally, regarding appellants highlighting the fact that they have an otherwise good tax compliance history, appellants' filing, and payment history is not relevant to the abatement of the late payment penalty because there is no California legal authority which allows for an abatement of the penalty on those grounds. (See *Appeal of Porreca*, 2018-OTA-095P.) The reasonable cause provisions in R&TC section 19132 provide the only basis under California law to abate a late payment penalty, and we find here that no such reasonable cause exists. The penalty cannot be abated based on appellants' history of tax compliance, no matter how commendable that may be.

For the foregoing reasons, appellants have not met their burden of proof to establish reasonable cause for the late payment of tax.


HOLDING

Appellants have not established reasonable cause for the late payment of tax for the 2019 tax year.

DISPOSITION

Respondent's action in denying appellants' claim for refund is sustained.

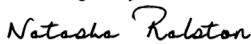
DocuSigned by:



Elliott Scott Ewing
Administrative Law Judge

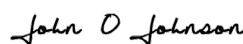
We concur:

DocuSigned by:



Natasha Ralston
Administrative Law Judge

DocuSigned by:



John O. Johnson
Administrative Law Judge

Date Issued: 1/3/2022