

FACTUAL FINDINGS

1. Appellants filed their 2020 California resident income tax return (Form 540) on April 5, 2021. On the return, appellants reported a total tax of \$60,065, a California withholding amount of \$14,197, and estimated tax payments of \$37,000, which resulted in a tax due of \$8,868, plus a self-reported estimated tax penalty of \$61. Appellants' return showed a total amount due of \$8,929. Appellants did not remit a payment with their return.
2. FTB accepted appellants' 2020 Form 540 as filed and issued appellants a State Income Tax Balance Due Notice (Notice) dated August 9, 2021, imposing a late payment penalty of \$576.42.²
3. On August 11, 2021, and August 12, 2021, appellants remitted payments of \$8,929 and \$702.35, which satisfied their balance due for the 2020 tax year.
4. On August 12, 2021, appellants submitted a claim for refund of the penalties for the 2020 tax year, asserting that the late payment of tax was a result of appellants' belief that the state tax payment due was an overpayment because they had a large federal tax overpayment. Appellants further asserted that they have always paid their state taxes in full and on time. Appellants conceded the interest amount.
5. On September 14, 2021, FTB sent appellants a letter, denying their claim for refund for the 2020 tax year because the information provided in their claim did not substantiate reasonable cause for abatement of the late payment penalty or fall under the criteria or exceptions provided in R&TC section 19136 to abate the underpayment of estimated tax penalty.
6. This timely appeal followed.

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).” 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. Here, it is undisputed that appellants failed to timely pay their self-assessed tax liability

² FTB included in the Notice the amount of appellants' self-reported estimated tax penalty.

of \$8,929 by the payment due date of May 17, 2021,³ and therefore the late payment penalty was properly imposed.

The late payment penalty may be abated if taxpayers show that the failure to make a timely payment of tax was due to reasonable cause and not due to willful neglect. (R&TC, § 19132(a).) To establish reasonable cause for the late payment of tax, taxpayers must show that their failure to make a timely payment of the proper amount of tax occurred despite the exercise of ordinary business care and prudence. (*Appeal of Friedman*, 2018-OTA-077P.) The failure to timely remit the balance due on a tax liability caused by an oversight does not, by itself, constitute reasonable cause. (*Ibid.*) The reason for missing the deadline must be such that an ordinarily intelligent and prudent businessperson would have acted similarly under the same circumstances. (*Appeal of Triple Crown Baseball LLC*, 2019-OTA-025P.) Unsupported assertions are not sufficient to satisfy the taxpayer's burden of proof. (*Appeal of Scanlon*, 2018-OTA-075P.)

Appellants assert that even though their failure to timely pay their 2020 tax liability was an oversight, they did not delay other payments to FTB. Appellants allege that they made a payment in the amount of \$17,000 on April 11, 2021, and another payment in the amount of \$22,000 on June 15, 2021, which would have covered the deficit amount if FTB had not placed the funds in a different accounting column. Appellants further assert that they immediately paid their 2020 tax liability upon notification on August 11, 2021.

Appellants' oversight in failing to timely pay their 2020 tax liability does not constitute reasonable cause. Although appellants assert that their April 11, 2021 payment to FTB was sufficient enough to satisfy their 2020 tax liability and imply that FTB could have applied the payment to the 2020 tax liability, appellants have not provided any evidence showing that the April 11, 2021 payment was specifically for the 2020 tax liability or that appellants communicated with FTB about applying the April 11, 2021 payment to the 2020 tax liability prior to the payment due date of May 17, 2021.

Thus, appellants have not shown reasonable cause for their failure to timely pay their 2020 tax liability, and the late payment penalty must be sustained.

³ Due to the coronavirus pandemic, FTB postponed the due date for paying taxes for the 2020 tax year from April 15, 2021, to May 17, 2021. (See *2020 Tax Year Extension to File and Pay (Individual)*, February 10, 2022, Franchise Tax Board Newsroom (<https://www.ftb.ca.gov/about-ftb/newsroom/2020-tax-year-extension-to-file-and-pay-individual.html>).

HOLDING

Appellants have not shown reasonable cause for the late payment of a portion of their 2020 tax liability.

DISPOSITION

FTB's action is sustained.

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John O Johnson

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John O. Johnson

Administrative Law Judge

Date Issued: 4/19/2022