

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
S. EPSTEIN

) OTA Case No. 21017149
)
)
)
)
)

OPINION

Representing the Parties:

For Appellant: Arish Gill, Tax Appeals Assistance Program (TAAP)¹

For Respondent: Brad J. Coutinho, Tax Counsel III

J. LAMBERT, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, S. Epstein (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$5,524.26 for the 2019 tax year.

Office of Tax Appeals Administrative Law Judges Josh Lambert, Ovsep Akopchikyan, and Cheryl L. Akin, held an oral hearing via videoconference for this matter on March 23, 2022. At the conclusion of the hearing, the record was closed, and this matter was submitted for decision.

ISSUE

Whether the late payment penalty should be abated for the 2019 tax year.

¹ Haley A. Ritter of TAAP wrote appellant’s additional reply brief, Jamie Hulsey of TAAP wrote appellant’s reply brief, and appellant wrote her own opening brief.

FACTUAL FINDINGS

1. Appellant timely filed her 2019 California personal income tax return, reporting tax due of \$92,071, which she was required to pay electronically.²
2. On June 25, 2020, appellant accessed the FTB Web Pay website to pay her entire 2019 tax liability, which was due July 15, 2020.³
3. Appellant used the numbers from the bottom of her Vanguard brokerage account check book, which she believed were her routing number and account number, to make the attempted payment on the Web Pay website.
4. FTB's Web Pay website confirmed that it received a request to process the payment and provided appellant with a confirmation number.
5. Vanguard rejected appellant's attempted payment because appellant's Vanguard account does not permit electronic payments.
6. On September 14, 2020, FTB issued a State Income Tax Balance Due Notice, which notified appellant that she owed tax of \$92,071, a late payment penalty of \$5,524.26, and interest.⁴
7. Appellant paid the amount shown on the notice and filed a claim for refund of the late payment penalty, which FTB denied.
8. This timely appeal followed.

DISCUSSION

R&TC section 19001 generally provides that the personal income tax imposed “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 is

² In previous years, appellant mailed a check to pay her California taxes. For the 2019 tax year, appellant had a capital gain from the sale of a condominium that caused her tax payment to increase to an amount required to be paid electronically. (See R&TC, § 19011.5(a) [individual taxpayers are required to make electronic payments if they make an estimated tax or extension payment of more than \$20,000 on or after January 1, 2009, or if they file an original tax return with a tax liability over \$80,000 for any tax year beginning on or after that date].)

³ Due to the COVID-19 pandemic, FTB postponed the deadline for 2019 tax return payments until July 15, 2020, for all individuals and business entities. (See *State Postpones Tax Deadlines Until July 15 Due to the COVID-19 Pandemic*, March 18, 2020, available at: <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2020-3-state-postpones-tax-deadlines-until-july-15-due-to-the-covid-19-pandemic.html>.)

⁴ Appellant states that she does not request a refund of the interest and, therefore, the interest will not be addressed herein.

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 will 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, § 19132(a).) The taxpayer bears the burden of proving that both conditions existed. (*Appeal of Friedman*, 2018-OTA-077P.)

To establish reasonable cause for the late payment of tax, a taxpayer must show that the 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.) The taxpayer bears the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Appeal of Friedman*, *supra*.)

In this case, appellant attempted to timely pay the tax due using FTB's Web Pay system and she received confirmation that FTB received her request to process the payment.⁵ However, appellant's Vanguard account did not allow electronic payments, which appellant asserts she did not know. Appellant asserts that June 2020 was a stressful time of her life, stating that she was forced to move from her rental apartment by June 30, 2020, rather than July 15, 2020;⁶ she purchased a new home on June 19, 2020; and she needed to have her newly purchased home tented and fumigated.⁷ Appellant provides a letter from a Licensed Clinical Social Worker dated March 10, 2022, stating that appellant attended an online support group twice a week beginning in April 2020 due to anxiety related to the Covid-19 pandemic and her housing situation. The letter states that she was utilizing the support group to regain her ability to manage all aspects of her life, but due to her mental health condition, she was behind on taking care of personal matters during this time.

Appellant asserts in her briefing that, during the last week of June 2020, she was moving and dealing with the above-mentioned stressful circumstances, including the height of the Covid-

⁵ A Web Pay Confirmation is confirmation that FTB has received a request to process the payment and not confirmation of successful payment. The Web Pay system does not immediately verify that all information entered on the system will result in a successful payment. The confirmation directs taxpayers to verify that the funds have been withdrawn from their account.

⁶ The record indicates that her initial lease term was to end on June 15, 2020, and would be month-to-month thereafter subject to termination by either party with 30 days notice. On June 1, 2020, appellant gave formal notice that she would be moving, as she had purchased a new home. Appellant stated to the landlord that she would stay until June 30, but also requested an extension to stay until July 15. The landlord allowed her to stay until June 30.

⁷ Appellant asserts that, in October 2019, she sold her previous home.

19 pandemic, and quickly checked her Vanguard account statement and assumed the large decrease in funds meant her California taxes were paid. Appellant provides a copy of her Vanguard account overview statement showing activity from March 2020 to June 2020, which is in the record and shows that the funds in her account during this period decreased by substantially more than her total California taxes. Appellant also provided Vanguard statements listing substantial transactions in June, including a payment by check for her federal taxes on June 30, 2020, and a wire transfer on June 16, 2020. However, these withdrawal amounts are not similar enough to the amount of her 2019 California taxes such that they could reasonably be mistaken for a payment of her 2019 California taxes. Indeed, during the hearing, appellant testified that she checked only the end balance of her account and not the individual transactions to ensure her California taxes were paid. Appellant also testified that, after using the Web Pay system, she crossed it off her long to-do list and thought the task was completed successfully.⁸

Appeal of Scanlon, supra, held that reasonably prudent taxpayers exercising due care and diligence are expected to monitor their bank account and quickly ascertain whether a scheduled electronic payment from their account to FTB was in fact paid. *Appeal of Friedman, supra*, held that an error in not completing the Web Pay process, and not realizing that it had failed by checking their bank account, does not demonstrate due diligence, as would be exercised by an ordinarily intelligent and prudent businessperson.

Appellant asserts that she was unable to properly verify the payment of tax from her Vanguard account due to her anxiety from various circumstances around the time the payment was attempted. However, during the same period, appellant performed various difficult tasks and conducted business transactions that required her to conduct financial transactions and monitor her financial accounts, such as purchasing a new home, ending her rental agreement, moving from her rental to her new home, contracting for the fumigation of her new home, as well as completing other financial transactions, including paying her federal tax due.

Reasonable cause for a failure to timely pay tax may exist if the taxpayer's or a family member's illness or incapacity, either mental or physical, prevents the taxpayer from paying his or her tax, but not if the taxpayer is able to continue his or her business affairs despite the illness or incapacity. (See *Appeal of Belcher*, 2021-OTA-284P.) In this case, appellant's ability to

⁸ Appellant also states that the penalty should be abated because she has always timely paid her tax. However, a history of compliance does not, by itself, establish reasonable cause. (*Appeal of Moren*, 2019-OTA-176P.)

manage her business affairs during this period does not demonstrate that her anxiety and stressful circumstances prevented her from being able to properly check her account to ensure the attempted payment was successfully processed and withdrawn. In addition, it appears that appellant either did not check her account, performed a cursory review of her account, or checked an account overview which only lists changes in the account balance over a particular period, which is not sufficient to establish reasonable cause in this case.

Despite the challenging circumstances faced by appellant, a reasonably prudent businessperson would have checked their account and specifically verified the attempted electronic payment was timely processed. In addition, appellant was able to participate in various business activities and complete other financial transactions, which does not demonstrate that her circumstances prevented her from properly verifying her tax was paid. Accordingly, appellant has not established that the failure to timely pay tax was due to reasonable cause.

HOLDING

The late payment penalty is not abated for the 2019 tax year.

DISPOSITION

FTB's action is sustained.

DocuSigned by:

Josh Lambert

CB1F7DA37831416...

Josh Lambert
Administrative Law Judge

We concur:

DocuSigned by:

Ovsep Akopchikyan

88F35E2A835348D...

Ovsep Akopchikyan
Administrative Law Judge

DocuSigned by:

Cheryl L. Akin

1A8C8E38740B4D5...

Cheryl L. Akin
Administrative Law Judge

Date Issued: 5/23/2022