

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)	OTA Case No. 21037387
D. CATLIN AND)	
L. CATLIN)	
)	

OPINION

Representing the Parties:

For Appellants:	Murray Greiff, Attorney
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For Respondent:	Phillip C. Klean, Tax Counsel III Eric Yadao, Tax Counsel IV
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H. LE, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, D. Catlin and L. Catlin (appellants) appeal an action by the Franchise Tax Board (respondent) denying appellants' claim for refund of \$64,045.63 for the 2019 tax year.

Office of Tax Appeals Administrative Law Judges Huy "Mike" Le, Sara A. Hosey, and Josh Lambert held a virtual oral hearing for this matter on July 26, 2022. At the conclusion of the hearing, the record was closed, and this matter was submitted for an opinion.

ISSUES

1. Whether appellants have established reasonable cause for the late payment of tax to abate the late-payment penalty.
2. Whether appellants have established a basis to abate the estimated tax penalty.

FACTUAL FINDINGS

1. On June 14, 2019, appellants used respondent's Web Pay website to attempt a \$900,000 estimated tax payment but appellants mistakenly entered the wrong bank account number. Respondent's Web Pay website confirmed that it received a request to process the payment and provided appellants with a confirmation number. Respondent's Web

- Pay website also stated, “To confirm your payment has been cleared, review your bank account statement or contact your bank.”
2. Subsequently, respondent attempted to process the payment, but appellants’ bank rejected the attempt and provided reason code R20, which indicates a non-transaction account against which transactions are limited or prohibited.
 3. Later, appellants timely filed their 2019 California personal income tax return.
 4. Then, respondent issued a Notice of Tax Return Change – Revised Balance, which notified appellants that respondent revised the estimated tax payments as shown on their tax return by \$900,000 less than what appellants reported. This revision resulted, among other items, in the late-payment penalty and the estimated tax penalty.
 5. Appellants paid the balance due and filed a refund claim for the late-payment penalty and the estimated tax penalty.
 6. Respondent denied appellants’ refund claim, and this timely appeal followed.

DISCUSSION

Issue 1: Whether appellants have established reasonable cause for the late payment of tax to abate the late-payment penalty.

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.¹ The late-payment penalty may be abated if a taxpayer shows that the failure to make a timely payment of tax was due to reasonable cause and not due to willful neglect.² (R&TC, § 19132(a).) To establish reasonable cause, 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 Scanlon*, 2018-OTA-075P.) Unsupported assertions are not sufficient to satisfy a taxpayer’s burden of proof. (*Ibid.*)

¹ Appellants do not dispute the imposition of the penalty.

² There are no allegations of willful neglect in this appeal.

Appellants assert four main reasons that reasonable cause exists. First, appellants argue that they mistakenly entered the wrong bank account number in respondent’s Web Pay system. However, the failure to timely remit payment caused by an oversight does not, by itself, constitute reasonable cause. (*Appeal of Friedman*, 2018-OTA-077P.) Second, appellants claim that respondent never attempted to draw the funds from appellants’ bank account. However, the preponderance of the evidence shows that appellants’ bank rejected respondent’s attempt to process appellants’ payment because appellants used an account that was a “non-transaction account” against which transactions are limited or prohibited. Although appellants assert that they do not have a non-transaction account, they have not provided evidence to support this assertion, and the language from their brief is contradicting.³ Third, appellants argue they did not discover the non-payment until they received respondent’s tax notice. However, lack of notice from respondent of a failed payment does not negate appellants’ duty of prudence and due care to verify that their scheduled payment was successful. (*Appeal of Scanlon*, *supra*.) 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 respondent was, in fact, paid. (*Ibid*.) Even though appellants believed their bank would ensure that the payment would go through, this does not relieve appellants of the expectation that they confirm that the payment was, in fact, paid. Finally, appellants note their good compliance history. However, for the period at issue, California law does not have a procedure for abating the late-payment penalty based on compliance history.⁴ (*Appeal of Scanlon*, *supra*.) Thus, appellants have not established that the failure to timely pay tax was due to reasonable cause.

Issue 2: Whether appellants have established a basis to abate the estimated tax penalty.

California conforms to IRC section 6654 and imposes an estimated tax penalty for the failure to timely make estimated income tax payments. (R&TC, § 19136(a).) The estimated tax penalty is similar to an interest charge and applies from the due date of the estimated tax payment until the date it is paid. (IRC, § 6654(b)(2).)

³ Appellant’s opening brief stated that the account used “is a special-purpose account that has very little transactions, and it was never used for tax payments.”

⁴ R&TC section 19132.5 provides for a one-time abatement a timeliness penalty based on a history of compliance but only for taxable years beginning on or after January 1, 2022.

Appellants do not protest the imposition or computation of the penalty.⁵ Appellants argue the estimated tax penalty should be abated based on IRC section 6654(e)(3)(A), which provides that the penalty may be waived if respondent determines that “by reason of casualty, disaster, or other unusual circumstances the imposition of such addition to tax would be against equity and good conscience.” Where specific words (“casualty” and “disaster”) are followed by more general words (“other unusual circumstances”), the more general words are generally limited to items that are similar to the specific words. (*Appeal of Johnson*, 2018-OTA-119P.) Casualties and disasters are unexpected events that cause a hardship or loss such that, depending on the circumstances, it might be inequitable for the addition to tax to apply. (*Ibid.*)

Here, where appellants mistakenly entered the wrong bank account number in respondent’s Web Pay system, this mistake cannot be interpreted to mean “casualty,” “disaster,” or “other unusual circumstances” that are similar to “casualty” or “disaster.” In addition, appellants’ mistake does not constitute a hardship or loss that would be inequitable to apply the estimated tax penalty. Accordingly, appellants have failed to establish a basis to abate the estimated tax penalty.

⁵ In addition, appellants have not alleged, and the record does not show, that they retired or became disabled in 2019 in order to waive the penalty under IRC section 6654(e)(3)(B). Therefore, we do not discuss this further.

HOLDINGS

1. Appellants have not established reasonable cause for the late payment of tax to abate the late-payment penalty.
2. Appellants have not established a basis to abate the estimated tax penalty.

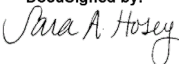
DISPOSITION

OTA sustains respondent’s action.


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 Huy “Mike” Le
 Administrative Law Judge

We concur:
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 Sara A. Hosey
 Administrative Law Judge

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 Josh Lambert
 Administrative Law Judge

Date Issued: 10/26/2022