

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
H. DUINO

) OTA Case No. 220410272
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OPINION

Representing the Parties:

For Appellant: Michela Duino

For Respondent: Bradley J. Coutinho, Tax Counsel III

For Office of Tax Appeals: Amber Poon, Graduate Legal Assistant

J. LAMBERT, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, H. Duino (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$1,080.45 for the 2020 tax year.¹

Appellant elected to have this appeal determined pursuant to the procedures of the Small Case Program. Those procedures require the assignment of a single Administrative Law Judge. (Cal. Code Regs., tit. 18, § 30209.1.) Office of Tax Appeals (OTA) Administrative Law Judge Josh Lambert held an electronic oral hearing for this matter on December 29, 2022. At the conclusion of the hearing, the record was closed, and this matter was submitted for an opinion.

ISSUE²

Whether the late payment penalty should be abated.

¹ This amount is comprised solely of a late payment penalty of \$1,080.45.

² The parties discussed whether the underpayment of estimated tax penalty (estimated tax penalty) of \$66.00 should be abated. However, appellant’s claim for refund only requested a refund of the late payment penalty of \$1,080.45 and FTB denied the claim for refund in this amount. Because appellant has not requested a refund of the \$66.00 estimated tax penalty and FTB has not denied a claim for refund related to the estimated tax penalty, OTA only has jurisdiction to review FTB’s denial of appellant’s claim for refund of the late payment penalty of \$1,080.45. (See Cal. Code Regs., tit. 18, § 30103(a)(3).) Therefore, OTA will not review the imposition of the estimated tax penalty.

FACTUAL FINDINGS

1. Appellant attempted to make an estimated tax payment of \$18,000 for the 2020 tax year on September 11, 2020, through FTB's Web Pay system. The payment was dishonored because appellant omitted the last digit of his bank account number. The record includes emails from FTB to appellant after he requested to make tax payments through FTB's Web Pay system. The emails provide the following: "To confirm your payment has been cleared, review your bank account statement or contact your bank."
2. Appellant attempted to make a second estimated tax payment of \$18,000 for the 2020 tax year on September 16, 2020, through FTB's Web Pay system. For this payment, appellant entered the correct bank account number, and the payment was accepted.
3. Appellant timely filed his 2020 California income tax return, reporting total tax of \$36,606 and tax payments of \$40,200.
4. Upon review, FTB calculated that appellant made tax payments of \$22,200.00,³ rather than the \$40,200.00 reported. On October 7, 2021, FTB issued appellant a Notice of Tax Return Change – Revised Balance, which notified appellant that he owed \$15,722.77, an amount comprised of unpaid tax of \$14,406.00, a late payment penalty of \$1,080.45, an underpayment of estimated tax penalty of \$66.00, and interest.
5. On October 14, 2021, appellant paid the amount due and filed a claim for refund for the late payment penalty of \$1,080.45, which FTB denied.
6. This timely appeal followed.

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 (determined without regard to any extension of time for filing). (R&TC, § 19001.) Here, FTB properly imposed the late payment penalty because appellant was required to pay his taxes by May 17, 2021,⁴ and

³ This amount includes an estimated tax payment of \$3,000 on July 3, 2020, an estimated tax payment of \$18,000 on September 16, 2020, and an extension payment of \$1,200 on May 17, 2021.

⁴ In response to COVID-19, FTB postponed the due dates, for individuals, for returns and payments to May 17, 2021. (See <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2021-03-state-tax-deadline-for-individuals-postponed-until-may-17-2021.html>.)

appellant did not satisfy his tax liability until October 14, 2021. There is no dispute as to the calculation of the 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, § 19132(a)(1).) To establish reasonable cause for the late payment of tax, a taxpayer must show that the failure to make a timely payment 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 Moren*, 2019-OTA-176P.)

Appellant acknowledges that he inadvertently input the incorrect bank account number into FTB's Web Pay system for the attempted payment on September 11, 2020. Appellant states that, at the time he attempted the payment, he believed the payment was processed because FTB's Web Pay website provided a confirmation number.⁵ Appellant asserts that he has limited internet access, so it is difficult for him to review the electronic bank statements. Appellant also asserts that the bank statements are complex, and it is difficult to determine amounts that have been withdrawn. Appellant further contends he was not notified by FTB or his bank that the payment could not be processed and, thus, he was unaware of the error until he received FTB's notice in October 2021.

A reasonably prudent taxpayer exercising due care and diligence is expected to monitor his or her bank account and quickly ascertain whether a scheduled electronic payment to FTB was in fact paid. (*Appeal of Scanlon, supra; Appeal of Friedman*, 2018-OTA-077P.) The record includes confirmation emails from FTB to appellant after he requested to make tax payments through FTB's Web Pay system. The emails provide the following: "To confirm your payment has been cleared, review your bank account statement or contact your bank." Here, appellant has not shown what steps he took to verify that funds were in fact withdrawn from his bank account by reviewing his bank account statement or contacting his bank. Appellant has not provided evidence establishing the alleged difficulties in monitoring his bank account, or that such difficulties prevented him from monitoring his bank account despite the exercise of ordinary

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 into the system will result in a successful payment. The confirmation directs taxpayers to verify that the funds have been withdrawn from their account.

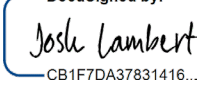
business care and prudence. In addition, a lack of notice from FTB of a failed payment does not negate a taxpayer's duty of prudence and due care to verify that a payment was successful. (*Appeal of Scanlon, supra.*) Based on the foregoing, appellant has not established reasonable cause for failing to timely pay tax.

HOLDING

The late payment penalty should not be abated.

DISPOSITION

FTB's action is sustained.

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Josh Lambert
Administrative Law Judge

Date Issued: 3/16/2023