

- However, appellants erred by adding an extra “0” to their bank account number, inputting 11 digits instead of 10. As a result, respondent could not process appellants’ payment.
3. On June 6, 2021, appellants called respondent to inquire about the payment but could not get through. Later this same day, appellants wrote a letter to respondent.¹
 4. On June 8, 2021, appellants registered with respondent for individual account access via MyFTB.
 5. On June 11, 2021, respondent mailed appellants their MyFTB Personal Identification Number so appellants could complete the registration process and access their account online.
 6. On June 24, 2021, appellants contacted respondent via chat to inquire about the payment status and informed respondent that they were unable to locate their payment on their account. Respondent informed appellants that their payment was rejected due to invalid account information. Appellants made a successful payment this same day, which included the late-payment penalty and applicable interest.
 7. Then, appellants filed a claim for refund based on reasonable cause.
 8. Respondent denied appellants’ claim for refund. 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 (without regard to extensions of time for filing). (R&TC, § 19001.) For the 2020 taxable year, respondent postponed the filing and payment due date to May 17, 2021.² Here, although appellants attempted to make a payment on May 15, 2021, appellants did not successfully remit payment until June 24, 2021; therefore, respondent properly imposed 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, § 19132(a)(1).) There are no allegations of willful neglect in this appeal. Thus, OTA’s sole focus here is on reasonable cause.

¹ OTA finds credible appellant-husband’s testimony that he called respondent on June 6, 2021, and his testimony is corroborated with his June 6, 2021 letter.

² See <https://www.ftb.ca.gov/about-ftb/newsroom/2020-tax-year-extension-to-file-and-pay-individual.html>.

To establish reasonable cause for a late payment of tax, taxpayers 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 (*Scanlon*)). The taxpayers bear the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Appeal of Friedman*, 2018-OTA-077P (*Friedman*)). A failure to pay will be considered due to reasonable cause if the taxpayers make a satisfactory showing that they exercised ordinary business care and prudence in providing for the payment of their tax liability and were nevertheless either unable to pay the tax or would suffer undue hardship if they paid on the due date. (*Ibid.*) The applicable standard of proof is by a preponderance of the evidence. (Cal. Code Regs., tit. 18, § 30219(c).)

Respondent argues that appellants have not established reasonable cause to abate the late-payment penalty and cites two OTA Opinions: *Scanlon* and *Friedman*.

In *Scanlon*, the taxpayers attempted to make an estimated tax payment using respondent's Web Pay system but made an error when inputting their bank account number. (*Appeal of Scanlon, supra.*) As a result, respondent could not process the taxpayers' payment. (*Ibid.*) Approximately eight months later, respondent issued a Notice of Tax Return Change – Revised Balance, advising the taxpayers of an unpaid balance due and imposing penalties. (*Ibid.*) *Scanlon* noted that “[w]e would expect reasonably prudent taxpayers exercising due care and diligence to monitor their bank account and quickly ascertain whether a scheduled electronic payment from their account to FTB was in fact paid.” (*Ibid.*) *Scanlon* also noted that since the taxpayers previously made the same type of error for a prior tax year, they were expected to be “especially diligent” regarding their electronic payments. Accordingly, *Scanlon* found that the taxpayers did not establish reasonable cause to abate the late-payment penalty. (*Ibid.*)

In *Friedman*, the taxpayers initiated the process for making an estimated tax payment using respondent's Web Pay system, but they failed to complete the final steps to submit their payment because they believed the screen titled “Web Pay – Review Your Request” was a confirmation screen. (*Appeal of Friedman, supra.*) Approximately 10 months later, respondent sent appellants a notice informing them that the estimated tax payment was not paid and imposed penalties. (*Ibid.*) *Friedman* noted that the taxpayers' “error in not completing the Web Pay process, and not realizing that it had failed by checking their bank account balance, does not demonstrate due diligence, as would be exercised by an ordinarily intelligent and prudent

businessperson.” (*Ibid.*) “The failure to timely remit the balance due on a tax liability caused by an oversight does not, by itself, constitute reasonable cause.” (*Ibid.*) Thus, *Friedman* held that the taxpayers did not establish reasonable cause to abate the late-payment penalty. (*Ibid.*)

Here, appellants erred in using respondent’s Web Pay system when they added an extra “0” to their bank account number, inputting 11 digits instead of 10. This minor error, however, is not fatal to appellants’ argument for abatement of the late-payment penalty. OTA must evaluate all the facts and circumstances, including how appellants became aware of the mistake, if appellants took timely actions to correct the mistake, and whether appellants previously made the same type of error. (See *Appeal of Scanlon, supra*; *Appeal of Friedman, supra*.)


Unlike the taxpayers in *Scanlon* and *Friedman*, appellants did not wait for a balance due notice from respondent to become aware of their mistake. Instead, appellants reviewed their bank account and quickly ascertained that a payment was not made. In particular, three weeks after the failed Web Pay payment, appellants called respondent but could not get through. This same day, appellants wrote respondent a letter to inquire about the payment. Two days later, appellants registered for individual account access via MyFTB. Two weeks later, appellants contacted respondent via chat, informed respondent that they were unable to locate the payment on their account, and, at respondent’s direction, made a successful payment. Notably, appellants made a successful payment within roughly six weeks of their failed Web Pay payment, which is significantly shorter than the eight months in *Scanlon* and the ten months in *Friedman*. Furthermore, the record contains no indication that appellants made the same type of error for a prior tax year. Accordingly, appellants’ actions are consistent with what an ordinarily intelligent and prudent businessperson would have done under the circumstances; thus, they have established reasonable cause to abate the late-payment penalty.

HOLDING

Appellants have established reasonable cause to abate the late-payment penalty.

DISPOSITION

OTA reverses respondent’s denial of appellants’ claim for refund of \$874.20, and applicable interest, for the 2020 tax year.

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Huy “Mike” Le
Administrative Law Judge

Date Issued: 3/27/2023