

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:

**J. BALDERSTON AND
L. SHIOZAKI**

) OTA Case No. 21129337
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OPINION

Representing the Parties:

For Appellants:

Eileen P. Gardiner
L. Shiozaki

For Respondent:

Andrea Watkins, Tax Counsel
Nancy E. Parker, Tax Counsel IV

T. STANLEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. Balderston and L. Shiozaki (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$3,779.56,¹ plus applicable interest, for the 2020 taxable year.

Appellants 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 Teresa A. Stanley held an oral hearing for this matter in Sacramento, California on January 25, 2023. At the conclusion of the hearing, OTA closed the record, and this matter was submitted for an opinion.

ISSUE

Have appellants established reasonable cause to abate the late-payment penalty?

¹ FTB agrees to abate interest and penalties totaling \$361.39, which is the amount appellants paid on September 2, 2021.

FACTUAL FINDINGS

1. Appellants filed a timely 2020 California tax return on May 15, 2021,² reporting tax due of \$58,447.
2. On May 17, 2021, appellants initiated a payment of \$58,486³ from a line of credit procured from California Bank Trust. Appellants initiated the payment using FTB's electronic payment system (Webpay). On the same day, appellants wrote a check to the IRS from the same line of credit account, which was honored by the IRS.
3. FTB issued a Notice of Tax Return Change showing a balance due of \$61,934.31, including a late-payment penalty of \$3,488.82, an estimated tax penalty of \$37.00, and applicable interest and fees.
4. Appellants contacted the bank and learned that it could not honor electronic payment requests from a line of credit account.
5. On July 22, 2021, appellants made an electronic payment of the balance stated in FTB's Notice of Tax Return Change from a checking account (not the line of credit account). Appellants confirmed this payment was posted on July 23, 2021.
6. Appellants requested abatement of the late-payment penalty based on reasonable cause.
7. FTB denied appellants' claim for refund, and 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).” A late-payment penalty is imposed when taxpayers fail to pay the amount shown as due on the return on or before the due date of the return. (R&TC, § 19132.) The late-payment penalty will be abated if the taxpayers show 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 taxpayers bear the burden of proving that both conditions existed. (*Appeal of Friedman*, 2018-OTA-077P.)

² For the 2020 taxable year, California extended the filing and payment due date to May 17, 2021. (<https://www.ftb.ca.gov/about-ftb/newsroom/2020-tax-year-extension-to-file-and-pay-individual.html>.)

³ Appellants self-assessed an underpayment of estimated tax penalty of \$39, which FTB reduced to \$37. That penalty is not at issue in this appeal.

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, supra.*) Taxpayers bear the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*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.*)

Appellants contend they acted as reasonably prudent businesspersons because they opened a line of credit expressly to pay their 2020 federal and state tax liabilities. Appellants further assert that it was reasonable to believe their payment made through FTB’s Webpay system would be completed because they had sufficient funds in the line of credit account to pay the liability, and the check written to the IRS, from the same line of credit account, was honored. Appellants state that they had no reason to believe the bank would not honor an online payment from a line of credit account. Appellants contend that they acted as reasonably prudent businesspersons because in “normal business practice, [. . .] if there are any issues with [an] electronic transfer, whether it’s a[n] ACH [Automated Clearing House], ETF [Electronic Fund Transfer], or wire transfer, the vendor will immediately notify the payee.” Because they were not notified that the transaction failed, appellants believe they acted reasonably in assuming the payment had been made, and the funds transmitted to FTB.


Appellants did initially take reasonable efforts to ensure that their California tax liability was paid on time. They opened a line of credit expressly for the purpose of paying their 2020 tax liabilities; they received confirmation that the IRS had received a payment (made by check) from the line of credit account; and, they scheduled the Webpay payment to FTB in a timely manner. However, appellants missed a step in the process by not checking to see if the payment was actually made to FTB from the line of credit account. The Webpay confirmation states “[a]llow up to 2 business days from the payment date for your bank account to reflect your payment. To confirm your payment has been cleared, review your bank account statement or contact your bank.” Appellants did not review their line of credit statement or contact their bank to ensure the payment was completed. Appellants did not act reasonably in assuming their payment was made rather than checking to make sure it had been. (See *Appeal of Friedman, supra.*)

HOLDING

Appellants have not established reasonable cause to abate the late-payment penalty.

DISPOSITION

FTB's action denying appellants' claim for refund, as modified, is sustained.

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Teresa A. Stanley
Administrative Law Judge

Date Issued: 4/3/2023