

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
J. WIENER

) OTA Case No. 220911370
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OPINION

Representing the Parties:

For Appellant: J. Wiener

For Respondent: Camille Dixon, Tax Counsel

V. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. Wiener (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$1,603.01 for the 2020 tax year.

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.) Appellant waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

ISSUE

Whether appellant has established entitlement to abatement of the late-payment penalty.

FACTUAL FINDINGS

1. On May 14, 2021, appellant attempted to make a timely extension payment of \$20,000 to FTB for tax year 2020.¹² The payment was dishonored due to invalid account information.

¹ In response to COVID-19, FTB postponed the deadline for individuals to file returns and make tax 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>.

2. On October 12, 2021, appellant timely filed a 2020 California Resident Income Tax Return reporting tax of \$65,636 and claiming payments of \$69,997, consisting of income tax withholdings of \$16,747 and estimated tax and other payments of \$53,250.
3. FTB processed the return and determined that appellant had made estimated tax and other payments of \$33,250, rather than the reported amount of \$53,250. FTB issued a Notice of Tax Return Change – Revised Balance (Notice) informing appellant of the underpayment of tax and imposing a late-payment penalty.
4. Appellant paid the balance due and filed a claim for refund requesting abatement of the late-payment penalty. Appellant asserted that he used the same information to make payments previously for his account and requested abatement of the late-payment penalty because he attempted to timely make the payment of \$20,000.
5. FTB denied appellant’s 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.) 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 the proper amount of tax occurred despite the exercise of ordinary business care and prudence. (*Appeal of Scanlon*, 2018-OTA-075P.) The failure to timely remit the balance due on a tax liability caused by an oversight does not, by itself, constitute reasonable cause. (*Appeal of Friedman*, 2018-OTA-077P.)

Appellant contends that the late payment is the result of an FTB operations issue because the payment of \$20,000 was mailed together with payments from his family members, whose payments were accepted. Appellant has not presented any evidence, such as a copy of the payment he attempted to submit, to establish that the \$20,000 payment used the correct account

² The manner in which appellant attempted to make this payment is unclear because the record does not include evidence verifying the form of the attempted payment. However, appellant states that he mailed the payment.

information. If appellant inadvertently provided invalid account information to FTB when he attempted to make the dishonored extension payment, as FTB's records indicate, he would not be entitled to abatement of the penalty due to an oversight on his part.

Additionally, appellant's attempted payment was of a significant amount such that it would be reasonable to expect a taxpayer exercising due care and diligence to notice that the payment was not debited from his bank account. (*Appeal of Friedman, supra.*) The exercise of ordinary business care and prudence includes an expectation that reasonably prudent taxpayers would monitor their bank account and quickly ascertain whether a payment to FTB was properly paid. (*Appeal of Scanlon, supra.*) Appellant initiated the payment of \$20,000 almost five months prior to filing his return, on which he reported payment of \$20,000. Appellant does not explain what efforts, if any, he made during this five-month period to ascertain that his payment was received by FTB. Therefore, appellant has not shown reasonable cause for failing to timely pay the tax due.

HOLDING

Appellant has not established entitlement to abatement of the late-payment penalty.

DISPOSITION

FTB's action is sustained.

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Veronica I. Long
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Veronica I. Long
Administrative Law Judge

Date Issued: 5/17/2023