

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
E. NUNEZ

) OTA Case No. 220610523
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OPINION

Representing the Parties:

For Appellant:

E. Nunez

For Respondent:

James Filling, Graduate Legal Assistant

For Office of Tax Appeals:

Andrew Delvasto, Graduate Student
Assistant

K. Long, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, E. Nunez (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$1,123.20, plus interest, for the 2020 tax year.

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

ISSUES

1. Whether appellant has demonstrated reasonable cause to support abatement of the late-payment penalty imposed under R&TC section 19132 for the 2020 tax year.
2. Whether appellant has demonstrated a legal basis to abate the accrued interest for the 2020 tax year.

FACTUAL FINDINGS

1. Appellant timely filed a 2020 California income tax return on May 15, 2021, reporting a liability of \$18,720 in tax, plus a self-assessed estimated tax penalty of \$202.¹
2. Appellant attempted to remit an electronic payment through FTB's Web Pay system on May 15, 2021, in the amount of \$18,922. This payment was dishonored after invalid bank information was entered.
3. Appellant successfully remitted an electronic payment through FTB's Web Pay system on July 2, 2021, in the amount of \$18,922.
4. On July 26, 2021, FTB issued a State Income Tax Balance Due Notice informing appellant of an additional liability in the amount of \$1,200.36, reflecting a late payment penalty of \$1,123.20 and interest of \$77.16. Appellant paid this amount in full on August 10, 2021.
5. Appellant filed a claim for refund for the late-payment penalty, plus interest, on January 15, 2022. FTB denied appellant's claim for refund in a letter dated May 16, 2022.
6. This timely appeal followed.

DISCUSSION

Issue 1: Whether appellant has demonstrated reasonable cause to support abatement of the late-payment penalty imposed under R&TC section 19132 for the 2020 tax year.

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.) When FTB imposes a penalty, the law presumes that the penalty was imposed correctly. (*Appeal of Xie*, 2018-OTA-076P.)

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 a late payment of tax, a taxpayer must show

¹ In response to the COVID-19 pandemic, FTB postponed the state tax filing and payment deadline for the tax year 2020 to May 17, 2021, for individual taxpayers. (See Franchise Tax Board, *State Tax Deadline for Individuals Postponed until May 17, 2021*, <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2021-03-state-tax-deadline-for-individuals-postponed-until-may-17-2021.html>.)

that the failure to make a timely payment occurred despite the exercise of ordinary business care and prudence. (*Appeal of Rougeau*, 2021-OTA-335P). Generally, “[t]he failure to timely remit the balance due on a tax liability caused by an oversight does not, by itself, constitute reasonable cause.” (See *Appeal of Friedman*, 2018-OTA-077P.)

The taxpayer bears the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Appeal of Triple Crown Baseball LLC*, 2019-OTA-025P.) Additionally, unsupported assertions are insufficient to satisfy a taxpayer’s burden of proof. (*Appeal of Porreca*, *supra*.)

Here, appellant’s 2020 tax payment was due May 17, 2021. Because FTB did not receive appellant’s payment until July 2, 2021, FTB properly imposed a late-payment penalty.

Appellant argues that there is reasonable cause for the late payment because appellant did not know that the first attempt at payment failed to process. Appellant contends that he previously attempted to make a timely payment and received a confirmation page leading appellant to believe the “payment had been completed.” Appellant asserts that when he became aware “that the original funds didn’t process,” he paid shortly thereafter.

Reasonable cause to abate a late-payment penalty is generally not established when a taxpayer enters incorrect bank account information. (See *Appeal of Scanlon*, 2018-OTA-075P.) “[R]easonably 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 FTB was in fact paid.” (*Ibid.*) Further, any “lack of notice from the FTB of a failed payment does not negate [appellant’s] duty of prudence and due care to verify that their scheduled payments were successful.” (*Ibid.*) Here, appellant erred by entering an incorrect 10- digit bank account number and failed to notice such error in a timely manner. Appellant failed to monitor whether the payment was successfully completed and thus did not exercise the ordinary business care and prudence necessary. Appellant’s failure to enter the correct bank information does not support a finding of reasonable cause.

Appellant also relies on a copy of FTB’s Web Pay Confirmation Page (confirmation page) as support for the proposition that he believed payment was timely made. However, the confirmation page is not an acknowledgement of payment, but rather the acknowledgement of a taxpayer’s request for the FTB to request payment from the designated bank account. The confirmation page itself instructs taxpayers to “review [their] bank account statement or contact

[their] bank” in order “[t]o confirm [their] payment has been cleared.” Put another way, the confirmation page itself is not proof of payment. Additionally, the confirmation page notifies taxpayers to “allow up to 2 business days from the payment date” for the transaction to go through so that the taxpayer could then verify successful payment. Accordingly, reliance on the confirmation page does not amount to reasonable cause.

As a result, appellant has not established reasonable cause for his late payment of tax for the 2020 tax year. As such, OTA does not find any basis to relieve the late-payment penalty.

Issue 2: Whether appellant has established a legal basis to abate the accrued interest for the 2020 tax year.

Any amount of the tax not paid by the due date requires interest be imposed for the period between the due date and the date of payment. (R&TC, § 19101(a).) Interest is not a penalty, but rather compensation for the taxpayer’s holding of money which should have been paid to the state. (*Appeal of Balch*, 2018-OTA-159P.) While appellant asserts there is reasonable cause for interest abatement due to his lack of knowledge of improper payment, the imposition of interest is mandatory, and can be abated only in certain circumstances, none of which apply here.² There is no reasonable cause exception to the imposition of interest. (*Appeal of Moy*, 2019-OTA-057P.) Consequently, appellant has not established any basis for interest abatement for the 2020 tax year.

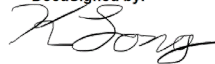
² For more information, see R&TC sections 19104 and 21012. (See also *Appeal of Moy*, 2019-OTA-057P.)

HOLDINGS

1. Appellant has not demonstrated reasonable cause to support abatement of the late-payment penalty imposed for the 2020 tax year.
2. Appellant has not established a legal basis to abate the accrued interest for the 2020 tax year.


DISPOSITION

FTB’s action denying appellant’s claim for refund is sustained.


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Keith T. Long
 Administrative Law Judge

We concur:

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Veronica I. Long
 Administrative Law Judge

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Sara A. Hosey
 Administrative Law Judge

Date Issued: 8/22/2023