

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 220911344
A. KHOSLA AND)
G. KAUR)
_____)

OPINION

Representing the Parties:

For Appellants: A. Khosla

For Respondent: Christopher T. Tuttle, Tax Counsel III

R. TAY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, A. Khosla and G. Kaur (appellants) appeal an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$2,078.48 for the 2020 tax year.

Appellants waived the right to an oral hearing; therefore, this panel decides this matter based on the written record.

ISSUE

Whether appellants have shown reasonable cause to abate the late payment penalty for the 2020 tax year.

FACTUAL FINDINGS

1. On January 8, 2021, appellants made a federal estimated tax payment in the amount of \$45,000. Appellants did not make a corresponding California estimated tax payment around that time.
2. Appellants filed a timely (on extension) 2020 California income tax return on September 22, 2021. Appellants reported \$27,713 tax due and remitted a payment of that amount with their return.
3. After processing the appellants’ return, respondent imposed a late payment penalty of \$2,078.48, which appellants paid on October 22, 2021.

4. Appellants filed a claim for refund and argued reasonable cause existed to excuse their late payment of tax because they had difficulty reaching their accountant on account of the COVID-19 pandemic. Appellants also argued that they received a delayed Schedule K-1, and consequently, were unable to estimate their tax liability.
5. Respondent denied appellants' claim for refund, and this timely appeal followed.
6. On appeal, appellants provided a Schedule K-1 from Rock Creek LLC, which reported a net loss of rental real estate income and a distribution of \$1,875, and an email dated May 24, 2021, informing appellants that the 2020 K-1 was available.

DISCUSSION

R&TC section 19132 imposes a late payment penalty when a taxpayer fails to pay the amount required to be shown 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 a 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).) 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.) To establish reasonable cause for a late payment of tax, a taxpayer must show that the failure to make a timely payment occurred despite the exercise of ordinary business care and prudence. (*Appeal of Rougeau*, 2021-OTA-335P). The taxpayer bears the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Ibid.*) The applicable standard of proof is by a preponderance of the evidence. (*Ibid.*) To meet this evidentiary standard, a party must establish by documentation or other evidence that the circumstances it asserts are more likely than not to be correct. (*Ibid.*)

Here, although appellants don't specifically state reasonable cause existed on appeal, they argue that circumstances existed that should excuse their late payment. Specifically, appellants argue that their "intention was not to delay the tax payment," as evidenced by their *federal* estimated tax payment made in January 2021. Appellants also argue that they received a late Schedule K-1, which prevented a timely tax payment. And, in their Opening Brief, appellants explained that they had substantial passive income in 2020, which "lead to miscalculation on [their] part on[sic] the amount of tax due."

Although appellants received a Schedule K-1 after the payment deadline, the amount of income reported on the tardy Schedule K-1 was small. Comparing the amount reported on the Schedule K-1 to appellants' adjusted gross income in 2020, the impact of the late document is minimal, at best. Additionally, appellants provided no evidence to show what efforts they made, if any, to get accurate information prior to the payment deadline. "The determination of whether reasonable cause exists for the late payment requires an analysis of appellant's actions leading up to the late payment, the timing of those actions, and whether they reflect ordinary business care and prudence." (*Appeal of Moren*, 2019-OTA-176P.) Since appellants have provided no evidence of any such actions, appellants have not shown they exercised ordinary business care and prudence. Thus, appellants' late Schedule K-1 does not constitute reasonable cause for abatement of the late payment penalty.

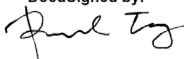
Furthermore, appellants' stated intention to make a timely tax payment is contravened by their actions. Although they made a timely *federal* estimated tax payment, appellants have not shown they attempted to make a timely *California* estimated tax payment. Appellants' omission apparently was an oversight – appellants admitted they applied the incorrect tax rate to their passive income for 2020. Appellants' error is not the result of any tax advice they received, and is contrary to how "an ordinarily intelligent and prudent businessperson would have acted" in similar circumstances. Appellants also allege they had difficulty reaching their accountant because of the COVID-19 pandemic, but have not provided specific evidence of such difficulties or any evidence on how such difficulties prevented them from making a timely tax payment. Thus, appellants have not shown reasonable cause, and this panel finds no other evidence in the record that reasonable cause existed.

HOLDING

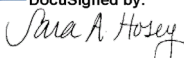
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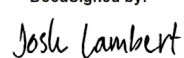
DISPOSITION

Respondent’s action is sustained in full.

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Richard Tay
Administrative Law Judge

We concur:

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Sara A. Hosey
Administrative Law Judge

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Josh Lambert
Administrative Law Judge

Date Issued: 9/19/2023