

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 220610517  
J. CLAPP AND )  
K. CLAPP )  
\_\_\_\_\_ )

**OPINION**

Representing the Parties:

For Appellants: Maurice P. Correia, CPA

For Respondent: Eric A. Yadao, Attorney

For the Office of Tax Appeals: Deborah Cumins,  
Business Taxes Specialist III

S. RIDENOUR, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, J. Clapp and K. Clapp (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$30,130.56<sup>1</sup> for the 2019 tax year.

Appellants waived the right to an oral hearing; therefore, the Office of Tax Appeals (OTA) decides this matter based on the written record.

**ISSUES**

1. Whether appellants have established reasonable cause for failing to make a timely payment of tax for the 2019 tax year.
2. Whether appellants are entitled to a one-time abatement of the late payment penalty.

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<sup>1</sup> While appellants indicate in their request for appeal to the Office of Tax Appeals that the amount at issue is \$28,247.40, appellants are actually requesting a refund of \$30,130.56, which is for the late payment penalty, as reflected in FTB’s claim for refund denial letter.

FACTUAL FINDINGS

1. On July 15, 2020, appellants attempted to make a timely electronic funds transfer (EFT) on FTB's Web Pay system in the amount of \$535,000 for the 2019 tax year. However, appellants made an error when inputting their bank account information, and as a result, FTB was unable to process appellants' payment.
2. Appellants timely filed their 2019 California tax return on October 15, 2020, within the automatic six-month extension period. Appellants reported a total tax liability of \$735,476 and claimed \$13,644 in withholding credits and \$880,200 in total estimated tax payments, which fully offset their tax liability.
3. On November 25, 2020, FTB issued a Notice of Tax Return Change for the 2019 tax year, notifying appellants that FTB only received \$345,200 in estimated tax payments, \$535,000 less than the amount appellants claimed on their return and, therefore, appellants owed taxes when they filed their 2019 tax return on extension. FTB calculated tax due of \$376,632,<sup>2</sup> and proposed to assess a late payment penalty and an estimated tax penalty,<sup>3</sup> plus accrued interest.
4. In a letter to FTB dated December 11, 2020, appellants asserted that FTB failed to account for the July 15, 2020 estimated tax payment of \$535,000. Appellants stated that they received a confirmation number for the payment from FTB's Web Pay system.
5. In response, FTB explained it was unable to process the \$535,000 EFT payment due to appellants erroneously inputting their bank account information.
6. On January 8, 2021, appellants paid the liability in full. Subsequently, appellants filed a claim for refund, which FTB denied.
7. This timely appeal followed.

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<sup>2</sup> This amount consists of the total tax liability of \$735,476 as filed, minus claimed withholding credits of \$13,644 and FTB's revised estimated tax payments of \$345,200.

<sup>3</sup> Appellants did not appeal the estimated tax penalty.

## DISCUSSION

### Issue 1: Whether appellants have established reasonable cause for failing to make a timely payment of tax for the 2019 tax year.

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).” R&TC section 19132 provides that 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. Due to the COVID-19 pandemic, the payment due date for the 2019 tax year was postponed to July 15, 2020.<sup>4</sup>

The late payment penalty may be abated if 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)(1).) To establish reasonable cause for a late payment of tax, taxpayers must show that the failure to make a timely payment occurred despite the exercise of ordinary business care and prudence. (*Appeal of Scanlon*, 2018-OTA-075P (*Scanlon*).) 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*).) The failure to timely remit the balance due on a tax liability caused by an oversight does not, by itself, constitute reasonable cause. (*Ibid.*)

On July 15, 2020, when appellants attempted to make an EFT payment of \$535,000, they received an email from FTB with the subject line captioned “Confirmation Web Pay *Scheduled*” (italics added), confirming that FTB received appellants’ payment *request*. The email does not, however, provide confirmation that the scheduled payment was completed and paid. Rather, the confirmation email specifically notified appellants that if they have insufficient funds, the banking information they entered is incorrect, or their account is closed, their financial institution may reject the payment request. The email advised appellants to allow up to two business days from the attempted payment date for their bank account to reflect the payment, and to confirm payment cleared by either reviewing their bank account statement or contacting their bank.

Appellants argue that they reasonably attempted to make an EFT payment and that they “reasonably assumed” that the payment was successful due to the confirmation email. Further,

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<sup>4</sup> See <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2020-3-state-postpones-tax-deadlines-until-july-15-due-to-the-covid-19-pandemic.html>.

appellants assert that they “assumed” the Web Pay system or FTB would promptly notify them if the EFT payment did not process for any reason. Appellants argue that their failure to make a timely payment for the 2019 tax year was the result of “FTB’s failure to promptly notify them of the EFT payment error.”

The EFT payment failed to be processed due to appellants erroneously inputting their bank account information. Regardless of whether the error was unintentional, an oversight that results in failure to timely pay a tax liability does not, by itself, constitute reasonable cause. (*Friedman, supra.*) Further, lack of notice from FTB of a failed payment does not negate a taxpayer’s duty of prudence and due care to verify that the payment was successful. (*Scanlon, supra.*) A reasonably prudent taxpayer exercising due care and diligence is expected to monitor his or her bank account, ascertain whether an electronic payment was paid to FTB from that account, and, if not, ensure payment is submitted. (*Ibid.*; see also *Friedman, supra.*)

Appellants assert that their case can be factually distinguished from *Scanlon*. Appellants, in noting that the taxpayers in *Scanlon* had made a similar error in a prior year, quote the following from the *Scanlon* Opinion: “In light of [the taxpayers’] actual knowledge of their prior error in 2012, [OTA] would expect appellants to have been especially diligent regarding their electronic payments in 2016.” Appellants assert that they never previously made a bank account error when using the Web Pay system and were “unfamiliar with the peculiarities of the system.” On that basis, appellants assert that the findings in *Scanlon* are not applicable to their case.

While the taxpayers in *Scanlon* made a similar error in the past, that factual distinction does not absolve appellants in this appeal for failing to ensure the scheduled payment was actually made, as advised by FTB’s email. The “especially diligent” language in *Scanlon* does not mean that appellants would only be expected to exercise ordinary business care and prudence in ensuring successful EFT payment if they had made similar errors in the past or were familiar “with the peculiarities of” Web Pay. Rather, the language merely reinforces that the exercise of ordinary business care and prudence requires taxpayers to check their bank account to ensure a scheduled payment was actually made.

While appellants assert that they “reasonably assumed” that the payment was successful due to FTB’s confirmation email, the “Confirmation Web Pay *Scheduled*” (italics added) email does not confirm that the scheduled payment was successfully made. Instead, the email advised appellants that their financial institution may reject the payment request, and for appellants to

confirm the scheduled payment cleared. Thus, OTA finds that appellants' assumption was not reasonable.

Further, appellants' contention that their failure to make a timely payment was the result of "FTB's failure to promptly notify them of the EFT payment error" is misplaced. The lack of notice from FTB of a failed payment does not negate appellants' duty of prudence and due care to verify that their scheduled payment was successful. (*Scanlon, supra.*) The exercise of ordinary business care and prudence requires taxpayers to *proactively* monitor their bank account to ensure a scheduled payment was successfully made. Appellants did not take steps to ensure that the scheduled payment was successfully made; therefore, appellants did not act as a reasonably prudent taxpayer exercising due care and diligence. OTA finds that appellants have not established reasonable cause to abate the late payment penalty.

Issue 2: Whether appellants are entitled to a one-time abatement of the late payment penalty.

Appellants request a first-time abatement of the late payment penalty, pursuant to R&TC section 19132.5, asserting that they "have not previously been granted abatement under this section."

R&TC section 19132.5 provides that for tax years beginning on or after January 1, 2022, a taxpayer may request a one-time abatement of a timeliness penalty.<sup>5</sup> The statute does not apply retroactively; therefore, for tax years beginning before January 1, 2022, there is no statutory provision for one-time abatement of a timeliness penalty. As the 2019 tax year is at issue here, this newly-enacted provision is inapplicable, and OTA finds that appellants are not entitled to a one-time abatement of the late payment penalty.

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<sup>5</sup> For purposes of R&TC section 19132.5, a timelessness penalty is defined as a penalty imposed under R&TC sections 19131 (i.e., late filing penalty) or 19132 (i.e., late payment penalty).

HOLDINGS

- 1. Appellants have not established reasonable cause for failing to make a timely payment of tax for the 2019 tax year.
- 2. Appellants are not entitled to a one-time abatement of the late payment penalty.

DISPOSITION

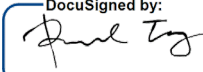
FTB’s action denying appellants’ claim for refund is sustained.

DocuSigned by:  
*Sheriene Anne Ridenour*  
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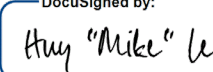
Sheriene Anne Ridenour  
 Administrative Law Judge

We concur:

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Richard Tay  
 Administrative Law Judge

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Huy “Mike” Le  
 Administrative Law Judge

Date Issued: 10/5/2023