

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 230513333
M. MCCAWE)
)
)
)
)
)

OPINION

Representing the Parties:

For Appellant: S. Scott Krahling, CPA

For Respondent: Christopher Davis, Attorney

L. KATAGIHARA, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. McCaw (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$23,309.81 for the 2020 tax year.

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

ISSUE

Whether appellant has established reasonable cause for failing to timely pay her tax liability.

FACTUAL FINDINGS

1. In January 2021, appellant made two estimated tax payments totaling \$11,600 towards her 2020 tax year liability. At least one of these payments was made using FTB’s EFT Web Pay service (Web Pay).
2. According to appellant, appellant attempted to make a timely \$300,000 extension payment on May 13, 2021,¹ using Web Pay but the payment was unsuccessful. On

¹ In response to COVID-19, FTB postponed the 2020 tax year due dates, for individuals, for returns and 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>.)

- June 3, 2021, appellant reattempted the Web Pay payment but, unbeknownst to appellant, it was again unsuccessful. Prior to these attempts, appellant successfully made extension payments using Web Pay for the 2017 and 2018 tax years.
3. In October 2021, appellant timely filed her California income tax return for the 2020 tax year pursuant to FTB's automatic six-month extension. In her 2020 tax return, appellant reported making tax payments totaling \$305,800.
 4. However, FTB received tax payments totaling \$11,600, not \$305,800, from appellant for the 2020 tax year. Consequently, FTB issued a Notice of Tax Return Change – Revised Balance informing appellant of her outstanding California tax liability and imposing a late payment penalty, an estimated tax penalty, and applicable interest.
 5. Thereafter, appellant paid the tax liability, penalties, and interest, and filed a timely claim for refund requesting abatement of the late payment penalty.
 6. FTB denied appellant's claim for refund and 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.) Here, it is undisputed that appellant failed to timely pay her tax liability. Therefore, the penalty was properly imposed.

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.² (R&TC, § 19132(a)(1).) To establish reasonable cause for a late payment of tax, the 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.) An untimely payment caused by an oversight does not, by itself, constitute reasonable cause. (*Appeal of Friedman*, 2018-OTA-077P.)

Appellant asserts that reasonable cause exists because appellant made a good faith effort and took reasonable steps to timely pay her tax liability. Appellant points to the fact that she attempted to make her extension payment on May 13, 2021, and again on June 3, 2021, but used

² FTB has not asserted, and the evidence does not indicate, that appellant's failure to make a timely payment of tax was due to willful neglect.

an incorrect routing number both times. Appellant refers to this error as a “technical issue with the bank’s routing numbers.” Appellant also argues that because she has already paid the tax and interest, the penalty is excessively punitive.

First, there is nothing in the law that allows abatement of the late payment penalty on the basis that it is excessively punitive. The late payment penalty is imposed by and calculated according to the statutes passed by the California Legislature, and the Office of Tax Appeals is charged with enforcing the law as it is written. (See *Appeal of Sedillo*, 2018-OTA-101P.) Second, appellant’s failure to use the correct routing number for the payment at issue here was an oversight on appellant’s part, and an oversight does not constitute reasonable cause. (*Appeal of Friedman, supra.*) Prior to May 2021, appellant made several other successful payments to FTB via Web Pay. However, appellant did not exercise the same level of care and prudence with respect to the payment due in May 2021, which ultimately caused her payment to be untimely. Therefore, appellant has not established reasonable cause for failing to timely pay her tax liability.

HOLDING

Appellant has not established reasonable cause for failing to timely pay her tax liability.

DISPOSITION

FTB’s action is sustained.

DocuSigned by:
Lauren Katagihara
F595B34010D8470...
Lauren Katagihara
Administrative Law Judge

We concur:

DocuSigned by:
Andrea L.H. Long
272945E7B572445...
Andrea L.H. Long
Administrative Law Judge

DocuSigned by:
Richard Tay
F8E81582726F448...
Richard Tay
Administrative Law Judge

Date Issued: 11/14/2023