

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
M. CAMARENA AND) OTA Case No. 230312698
M. CAMARENA)
_____)

OPINION

Representing the Parties:

For Appellants: M. Camarena
For Respondent: Alisa L. Pinarbasi, Attorney

S. BROWN, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. Camarena and M. Camarena (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$1,256.32 for the 2021 tax year.

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

ISSUE

Whether appellants have established reasonable cause to abate the late payment penalty.

FACTUAL FINDINGS

1. On April 14 and April 15, 2022, appellants made a total of three payments to the IRS via the IRS website.
2. On September 15, 2022, appellants untimely filed their 2021 California Resident Income Tax Return (Form 540) for the 2021 tax year, but did not make any payment to FTB.
3. On October 6, 2022, FTB sent appellants a Notice of Tax Return Change – Revised Balance stating that appellants owed a balance of \$17,186.51 for the 2021 tax year, consisting of tax of \$15,704, a late payment penalty of \$1,256.32, and interest of \$226.19.

4. On October 11, 2022, appellants contacted FTB by telephone to inquire about why FTB notified appellants of a balance due, and explained that appellants had made multiple payments through the IRS website. FTB indicated that appellants showed a balance due of \$17,186.51 to FTB, and stated that payments to the IRS are not forwarded to FTB.
5. On October 11, 2022, appellants paid FTB the \$17,186.51 balance in full.
6. On October 15, 2022, FTB received from appellants a claim for refund.
7. On February 7, 2023, FTB denied appellants' claim for refund.
8. Appellants timely filed this appeal to the Office of Tax Appeals for a refund of \$1,256.32.

DISCUSSION

R&TC section 19132 imposes a late payment penalty when a taxpayer fails to pay the amount of tax 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 (determined without regard to any extension of time for filing the return). (R&TC, § 19001.) Here, the late payment penalty was properly imposed because appellants failed to pay their tax liability by the due date. Appellants have not disputed that their payment was late or that FTB properly calculated the late payment penalty amount. Thus, the only issue is whether appellants have demonstrated reasonable cause for their failure to make a timely payment of tax.

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 not willful neglect. (R&TC, § 19132(a)(1).) 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 Moren*, 2019-OTA-176P.) The taxpayer bears the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Ibid.*) The failure to timely remit payment due to an oversight does not, by itself, constitute reasonable cause. (*Appeal of Friedman*, 2018-OTA-077P.) The taxpayer must provide credible and competent evidence to support the claim of reasonable cause; otherwise, the penalty will not be abated. (*Appeal of Xie*, 2018-OTA-076P.)

Appellants contend that their late payment occurred because they made their California tax payment to the IRS instead of FTB due to confusion regarding the two agencies, stating that they “made all payments to the IRS thinking [it] would send the remaining balance to [FTB].”

Here, appellants’ assertions do not demonstrate reasonable cause for late payment of their 2021 tax liability. Making payments to the IRS instead of to FTB does not constitute the exercise of ordinary business care and prudence. The 2021 Form 540 Instructions specify and describe the various options for paying the amounts owed (such as using FTB’s Web Pay system or mailing a check or money order to FTB), but appellants did not follow those instructions. While appellants may have intended to meet their tax obligations, their actions do not establish reasonable cause for the late payment.¹

HOLDING

Appellants have not established reasonable cause to abate the late payment penalty.

DISPOSITION

FTB’s action is sustained.

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Suzanne B. Brown

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Suzanne B. Brown
Administrative Law Judge

We concur:

DocuSigned by:

Josh Lambert

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Josh Lambert
Administrative Law Judge

DocuSigned by:

Teresa A. Stanley

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Teresa A. Stanley
Administrative Law Judge

Date Issued: 1/24/2024

¹ R&TC section 19132.5 allows for the abatement of an individual’s first-time timeliness penalties. However, that section only applies to tax years beginning on or after January 1, 2022. (R&TC, § 19132.5(a)(1), (f).)