

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 230312818
W. OSTER AND)
M. HASHIMOTO)
_____)

OPINION

Representing the Parties:

For Appellants: Gregg Kobashigawa, CPA

For Respondent: Gi Jung Nam, Attorney

H. LE, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, W. Oster and M. Hashimoto (appellants) appeal an action by the Franchise Tax Board (respondent) denying appellants’ claim for refund of \$663.16 for the 2020 tax year.¹

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

ISSUE

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

FACTUAL FINDINGS

1. Appellants filed a timely tax return for the 2020 tax year listing, among other items, a total tax of \$6,508 and a “2020 CA estimated tax and other payments” of \$6,200.
2. However, respondent could not process appellants’ payments because they were dishonored.
3. Respondent issued appellants a Notice of Tax Return Change – Revised Balance. The notice shows respondent revised the amount of estimated tax payments shown on

¹ The \$663.16 amount consists of the late payment penalty of \$546.84 and interest of \$116.32. Appellants do not provide any specific arguments with respect to the interest; thus, interest will not be addressed further in this Opinion.

- appellants' tax return from \$6,200 to \$0, and included a late payment penalty and interest.
4. Appellants made payments to satisfy their dishonored payments, plus the late payment penalty and interest.
 5. Then, appellants sent a letter that respondent treated as a claim for refund of the late payment penalty and interest.
 6. Respondent denied appellants' claim for refund. This timely appeal followed.

DISCUSSION

R&TC section 19132 imposes a late payment penalty when taxpayers fail 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.) Appellants do not dispute that their payments were late or that respondent properly calculated the late payment penalty amount. Thus, the only issue is whether appellants have demonstrated reasonable cause for their failure to timely pay their required taxes in full.

The late payment penalty may be abated if taxpayers show that the failure to make timely payments 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 the late payment of tax, taxpayers must show that the failure to make timely payments of the proper amount of tax occurred despite the exercise of ordinary business care and prudence. (*Appeal of Friedman*, 2018-OTA-077P.) Taxpayers bear the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Ibid.*)

Appellants argue that reasonable cause exists because they are elderly, they suffer from health and cognitive issues, and they were moving to a nursing care facility which caused documents to be in transition. However, appellants have not submitted evidence to support their assertions. Thus, OTA finds appellants have not provided evidence to establish reasonable cause to abate the late payment penalty.

² There is no evidence this record showing willful neglect or an allegation of willful neglect. Thus, the balance of this analysis shall focus only on whether appellants meet the standard for proving reasonable cause.

HOLDING

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

DISPOSITION

OTA sustains respondent’s action in denying appellants’ claim for refund.

DocuSigned by:
Huy "Mike" Le
AT1783ADD49942B...
Huy "Mike" Le
Administrative Law Judge

We concur:

DocuSigned by:
Kenneth Gast
3AF5C32BB93B436...
Kenneth Gast
Administrative Law Judge

DocuSigned by:
Ovsep Akopchikyan
88F35E2A633348D...
Ovsep Akopchikyan
Administrative Law Judge

Date Issued: 2/26/2024