

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
M. SHAPIRO AND) OTA Case No. 230112417
C. SHAPIRO)
_____)

OPINION

Representing the Parties:

For Appellants: Ronald A. Roy, CPA

For Respondent: Noel Garcia-Rosenblum, Attorney

R. TAY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, M. Shapiro and C. Shapiro (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$4,077 for the 2021 tax year.

Appellants elected to have this appeal determined pursuant to the procedures of the Small Case Program. Those procedures require the assignment of a single administrative law judge. (Cal. Code Regs., tit. 18, § 30209.05(b).) Appellants waived the right to an oral hearing; therefore, the Office of Tax Appeals (OTA) decides this matter based on the written record.

ISSUE¹

Whether appellants have shown they are entitled to a refund of the late payment penalty and the estimated tax penalty for the 2021 tax year.

FACTUAL FINDINGS

1. In 2021, FTB received \$40,000 of estimated tax payments from Medical Source Group LLC, which was then a single-member LLC owned by appellant-husband. Later,

¹ Appellants included interest and the collection cost fee they paid for the 2021 tax year in the amount in controversy. However, appellants make no separate argument for relief of interest or the fee, and OTA also finds no reason in the record to grant any such relief. Thus, FTB’s action with respect to interest and the collection cost fee is sustained without further discussion.

- appellant-husband stated he made such payments with the intention of making estimated tax payments to appellants' personal tax account.
2. On February 18, 2022, appellants also made a \$4,205.07 tax payment to Medical Source Group LLC's tax account, which they intended to be a personal tax payment for the 2020 tax year, the year prior to the tax year at issue here. On February 22, 2022, appellants' representative contacted FTB stating appellants intended the payment to be made to their personal tax account. On February 23, 2022, appellants requested the payment be moved from the LLC's account to their personal account. FTB moved the payment.
 3. On March 30, 2022, appellants filed a timely California income tax return for the 2021 tax year. On their return, appellants reported having made estimated tax payments totaling \$40,000.
 4. FTB processed appellants' 2021 income tax return and issued a Notice of Tax Return Change – Revised Balance dated June 28, 2022. FTB made changes because it had no record of receiving appellants' estimated tax payments. FTB also imposed the late payment penalty.
 5. Appellants paid their balance due and filed a claim for refund. In their claim for refund, appellants' representative argued reasonable cause existed because appellants mistakenly made estimated tax payments on the account of Medical Source Group LLC, instead of their personal tax account for the 2021 tax year.
 6. FTB denied appellants' claim for refund in a letter dated December 8, 2022.

DISCUSSION²

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.) The late-payment penalty shall not apply if the failure to timely pay was due to “reasonable cause” and not willful neglect. (R&TC,

² Appellants make no separate argument for relief from the estimated tax penalty. The law allows for abatement of the estimated tax penalty for specific reasons, none of which are alleged here. (R&TC, § 19136; *Appeal of Johnson*, 2018-OTA-119P.) OTA also finds no evidence in the record that would allow abatement of the estimated tax penalty. Thus, FTB's action denying appellants' claim for refund of the estimated tax penalty is sustained without further discussion.

§ 19132(a).) To establish reasonable cause, the taxpayer must show that the failure to timely file a return occurred despite the exercise of ordinary business care and prudence. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.)

Here, it is uncontroverted appellants made untimely tax payments for the 2021 tax year. Appellants also do not argue any error in the computation of the penalty. Rather, appellants argue reasonable cause existed to excuse appellants' late payments for the 2021 tax year. Appellants assert they intended to make timely tax payments, but mistakenly made payments through Medical Source Group LLC's account after appellants' accountant instructed them to do so. Thus, appellants argue they exercised ordinary business care and prudence in their attempt to make timely tax payments, and thus, are entitled to abatement of the late payment penalty.

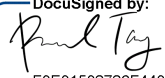
Appellants arguments are unavailing. Appellants assert they received advice from their accountant that payments made to the account of appellant-husband's wholly owned single-member LLC would be applied to their personal tax account. However, appellants do not provide copies of any such advice they received. Importantly, appellants knew such advice was erroneous prior to the payment deadline. On February 22, 2022, nearly two months prior to the payment deadline for the 2021 tax year, appellants' representative called FTB stating appellants had mistakenly made a tax payment for the 2020 tax year on Medical Source Group LLC's tax account that was intended for appellants' personal tax account. The next day, on February 23, 2022, appellants submitted a letter requesting the payment be moved from the LLC's account to appellants' personal tax account. The record shows appellants were aware the payments they made to the LLC's account would not be applied to appellants' personal account. Thus, despite any advice appellants may have received, appellants should have been aware that the estimated tax payments made for the 2021 tax year were erroneously made, and they had ample time to correct such errors. OTA finds appellants' failure to do so contravenes ordinary business care and prudence, and thus, appellants have not shown reasonable cause.

HOLDING

Appellants have not shown they are entitled to a refund of the late payment penalty and the estimated tax penalty for the 2021 tax year.

DISPOSITION

FTB's action is sustained in full.

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Richard Tay
Administrative Law Judge

Date Issued: 5/30/2024