

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: )  
DAMLE CONSULTING, INC. )  
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OTA Case No. 231014507

**OPINION**

Representing the Parties:

For Appellant: Dan N. Whittaker, CPA

For Respondent: Vivian Ho, Attorney

S. HOSEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Damle Consulting, Inc. (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$74,233.45 for the 2021 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 shown reasonable cause to abate the late payment penalty for the 2021 tax year.

**FACTUAL FINDINGS**

1. Appellant filed its 2021 California tax return on July 11, 2022. Appellant reported estimated tax payments in the amount of \$109,000, a pass-through entity elective tax payment of \$674,840, and an amount due of \$15. Appellant made the \$15 payment on July 11, 2022.
2. FTB only received \$109,015 in tax payments. On December 23, 2021, a payment of \$661,000 was attempted by appellant but dishonored by FTB.

3. On March 7, 2023, FTB notified appellant that it owed additional tax in the amount of \$674,840, and imposed a late payment penalty of \$74,233.45 and interest.<sup>1</sup>
4. Appellant paid the balance due and requested abatement of the late payment penalty.
5. FTB denied appellant's claim for refund and appellant filed this timely appeal.

### DISCUSSION

Appellant does not dispute the imposition or calculation of the late payment penalty. Instead, appellant asserts reasonable cause to abate the penalty. The late payment penalty may be abated if the taxpayer shows that the failure to make a timely payment was due to reasonable cause and not willful neglect. (R&TC, § 19132(a)(1).) FTB is not arguing willful neglect by appellant. To establish reasonable cause, 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.) The taxpayer bears the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Ibid.*) A failure to pay will be considered due to reasonable cause if the taxpayer makes a satisfactory showing that he or she exercised ordinary business care and prudence in providing for the payment of his or her tax liability and was nevertheless either unable to pay the tax or would suffer undue hardship if he or she paid on the due date. (*Appeal of Friedman*, 2018-OTA-077P.) 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 appeal, appellant contends that it received confirmation of the December 23, 2021 attempted electronic tax payment and FTB did not notify appellant of the unsuccessful payment attempt until over a year later in its March 7, 2023 notice. However, for more than one year from the date of the attempted payment, the record does not show that appellant checked its bank account to confirm whether the payment had actually processed. In *Appeal of Scanlon*, 2018-OTA-075P, the Office of Tax Appeals (OTA) held that it is expected for “reasonably prudent taxpayers exercising due care and diligence to monitor their bank account and quickly ascertain whether a scheduled electronic payment from their account to FTB was in fact paid.” Furthermore, lack of notice from FTB of a failed payment does not negate appellant's duty of prudence and due care to verify that its scheduled payments were successful. (*Ibid.*) Appellant

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<sup>1</sup> FTB imposed a late payment penalty of \$74,233.45 and an estimate tax penalty of \$240.75. Appellant only contests the late payment penalty, not the estimated tax penalty.

has not shown that it monitored its bank account to ensure its payment was successfully made to FTB.

Further, for the 2021 tax year, there is no basis to abate the late payment penalty based solely on a taxpayer’s history of timely paying taxes. (See *Appeal of Moren*, 2019-OTA-176P.)


For the reasons described above, OTA concludes that appellant has failed to show that it exercised ordinary business care and prudence or that there was reasonable cause to abate the late payment penalty.

HOLDING

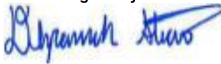
Appellant has not shown reasonable case to abate the late payment penalty for the 2021 tax year.


DISPOSITION

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

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Sara A. Hosey  
Administrative Law Judge

We concur:

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Lauren Katagihara  
Administrative Law Judge

DocuSigned by:  
  
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Asaf Kletter  
Administrative Law Judge

Date Issued: 7/24/2024