

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
C. SAWDYE AND) OTA Case No. 230613641
J. MORISANO)
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)

OPINION

Representing the Parties:

For Appellants: Katie Russell Hutto, Representative
Holly S. Ford, Representative

For Respondent: Christopher T. Tuttle, Attorney

K. WILSON, Hearing Officer: Pursuant to Revenue and Taxation Code (R&TC) 19324, C. Sawdye and J. Morisano (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$9,972.80 for the 2021 tax year. This matter is being decided based on the written record because appellants waived their right to an oral hearing.

ISSUE

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

FACTUAL FINDINGS

1. On October 14, 2022, appellants filed their joint 2021 California Non-Resident or Part-Year Resident Income Tax Return, reporting tax due of \$124,660. Appellants paid their tax due when they filed the return.
2. FTB subsequently issued appellants a Notice of Tax Return Change – Revised Balance, which, as relevant here, imposed a late payment penalty and interest.
3. Appellants later paid their liability and filed a claim for refund.
4. FTB denied appellants’ claim for refund. 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 appellants failed to pay their full California tax liability for the 2021 tax year in a timely manner and that FTB properly imposed the late payment penalty.

The late payment penalty may be abated, however, 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. (R&TC, § 19132(a)(1).) To establish reasonable cause for the 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.*)

Appellants state that in 2021 appellant-wife became a partner in a new partnership. Appellants assert that appellant-wife's former partnership always withheld California taxes on its California nonresidents to fully cover the California sourced income, but that appellant-wife's new partnership (unbeknownst to appellants) failed to do so. Appellants contend, in a general manner, that they exercised ordinary business care and prudence. Appellants, however, have not established what efforts, if any, they made to assess whether appellant-wife's new partnership would withhold California taxes for its California nonresident partners to fully cover the partners' California sourced income. Thus, appellants have not established that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. Therefore, appellants have not established reasonable cause to abate the late payment penalty.

Appellants also assert that they have a history of making timely filings and payments with the State of California. Based on the foregoing, appellants seek first-time abatement of the late payment penalty. R&TC section 19132.5, effective for tax years beginning on or after January 1, 2022, allows an individual taxpayer to request a one-time abatement of a timeliness penalty. That provision, however, is inapplicable to the 2021 tax year. (R&TC, § 19132.5(f).)

HOLDING

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

DISPOSITION

FTB’s action denying appellants’ claim for refund for the 2021 tax year is sustained.

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Kim Wilson
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Kim Wilson
Hearing Officer

We concur:

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Suzanne B. Brown
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Suzanne B. Brown
Administrative Law Judge

DocuSigned by:
Teresa A. Stanley
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Teresa A. Stanley
Administrative Law Judge

Date Issued: 7/25/2024