

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)	OTA Case No. 230713942
A. MAXWELL AND)	
J. FAUTEUX)	
_____)	

OPINION

Representing the Parties:

For Appellants: Michael Mesnick

For Respondent: Noel Garcia-Rosenblum, Attorney

V. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, A. Maxwell and J. Fauteux (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$7,177.97 for the 2021 tax year.

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

ISSUES

1. Whether the late-payment penalty was properly imposed.
2. Whether the underpayment of the estimated tax penalty (estimated tax penalty) was properly imposed.

FACTUAL FINDINGS

1. Appellants timely filed their 2021 California income tax return on April 15, 2022, which included a self-assessed estimated tax penalty.
2. Appellants scheduled an electronic payment of \$83,676 to be made to FTB on April 18, 2022.
3. On April 15, 2022, FTB’s internal systems recorded that a payment in the amount of \$83,676 was dishonored on appellants’ account.

4. On August 15, 2022, FTB issued appellants a State Income Tax Balance Due Notice notifying appellants of the tax and self-assessed estimated tax penalty due and imposing a late-payment penalty.
5. On August 24, 2022, appellants paid the tax due and on October 28, 2022, appellants paid the remaining balance.
6. Appellants filed a claim for refund of the penalties and provided a copy of the scheduled electronic payment of \$83,676 to be made to FTB on April 18, 2022, and a copy of their April 2022 bank account statement for bank account number beginning “5327,” reflecting sufficient funds to satisfy the scheduled payment.
7. Subsequently, FTB received appellants’ amended 2021 California income tax return, reporting a reduced tax due and an estimated tax penalty of \$898.
8. FTB denied the claim for refund.
9. This timely appeal followed.
10. On appeal, FTB provides a record of payments it received for appellants’ 2021 tax year. The record shows a dishonored payment of \$83,676 attempted on April 15, 2022, from a bank account number beginning “05387.” The record also shows that successful electronic payments were made on August 24, 2022, and October 28, 2022, from appellants’ bank account number beginning “05327.”
11. Also on appeal, FTB agrees to reduce appellants’ estimated tax penalty from \$1,115 to \$898, based on the reduced tax due as reported on appellants’ amended 2021 California income tax return.

DISCUSSION

Appellants assert the penalties were improperly imposed because they made a payment of \$83,676 on April 18, 2022, there were sufficient funds in their account to satisfy the payment, and FTB failed to withdraw the scheduled payment. However, FTB asserts that appellants’ scheduled payment failed because they entered an invalid account number. As support, appellants provide a copy of their electronic payment request and a bank statement showing that they had sufficient funds to satisfy the payment. FTB asserts that the payment failed because invalid bank account information was provided for the payment. In support, FTB provides a

document showing that a \$83,676 payment on appellants' account was dishonored on April 15, 2022.

Issue 1: Whether the late-payment penalty was properly imposed.

A late-payment penalty is imposed when a taxpayer fails to timely pay the tax shown on a return. (R&TC, § 19132(a)(1)(A).) Here, appellants assert that they scheduled a payment of tax that would have timely satisfied their tax obligation. However, the evidence presented by FTB supports that appellants provided an invalid bank account number because the dishonored payment information includes a bank account number beginning with "05387." In contrast, the accepted payments on appellants' account, as well as their banking statement, reflect a bank account number beginning "05327." Accordingly, the payment was not timely made and the late-payment penalty was correctly imposed.

To the extent that appellants assert that the penalty should be abated for reasonable cause, taxpayers must show that the failure to timely pay occurred despite the exercise of ordinary business care and prudence; that is, the taxpayer must show they acted as an ordinarily prudent businessperson would have under similar circumstances. (*Appeal of Moren*, 2019-OTA-176P.) Reasonably prudent taxpayers are expected to exercise due care and diligence by monitoring their bank account to ascertain whether a scheduled electronic payment from their account to FTB was in fact paid. (*Appeal of Scanlon*, 2018-OTA-075P.) Appellants did not pay the tax until August 24, 2022, approximately four months after the scheduled payment in April 2022 failed, and then only after FTB issued appellants a State Income Tax Balance Due notifying them of nonpayment. Based on this, appellants have not demonstrated that they monitored their bank account to ascertain whether the scheduled payment to FTB was in fact made. Accordingly, appellants have not established reasonable cause to abate the late-payment penalty.

Appellants alternatively contend that they are entitled to first-time penalty abatement under R&TC section 19132.5. That section provides for a one-time abatement of the late-payment penalty for individual taxpayers with a good tax compliance history. The statute, which was enacted in 2022 (added by Stats. 2022, ch. 55, § 10), applies only to requests for abatement made for tax years beginning on or after January 1, 2022. (R&TC, § 19132.5(f).) Appellants'

request, which is made for a penalty relating to their 2021 tax year, is therefore ineligible for abatement under this provision.

Issue 2: Whether the estimated tax penalty was properly imposed.

Internal Revenue Code (IRC) section 6654 imposes an addition to tax, which is treated and often referred to as a penalty, where an individual fails to timely pay estimated tax.¹ Appellants make the same assertions for the estimated tax penalty as the late-payment penalty. However, as discussed above, the evidence supports that appellants provided an invalid bank account number and the payment was untimely. Accordingly, the estimated tax penalty was properly imposed.

To the extent that appellants assert that they did not willfully fail to pay the estimated taxes, there is no reasonable cause abatement of the estimated tax penalty. (*Appeal of Scanlon, supra.*) Accordingly, there is no basis to abate the estimated tax penalty.

¹ R&TC section 19136 incorporates IRC section 6654, subject to certain exceptions not relevant to this appeal.

HOLDINGS

1. The late-payment penalty was properly imposed.
2. The estimated tax penalty was properly imposed.

DISPOSITION

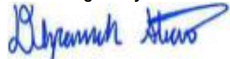
FTB’s action is revised to reduce the estimated tax penalty from \$1,115 to \$898 as conceded by FTB. FTB’s action is otherwise sustained.


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 Veronica I. Long
 Administrative Law Judge

We concur:

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 _____ For
 Lauren Katagihara
 Administrative Law Judge

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 Sara A. Hosey
 Administrative Law Judge

Date Issued: 7/26/2024