

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 231014570
G. KOPYTOV AND)
S. HRISTOVA)
_____)

OPINION

Representing the Parties:

For Appellants: G. Kopytov
S. Hristova

For Respondent: Paige Chang, Attorney

For Office of Tax Appeals: Nguyen Dang, Attorney

V. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, G. Kopytov and S. Hristova (appellants) appeal an action by the Franchise Tax Board (respondent) denying appellants’ claim for refund of \$5,764.53 for the 2021 tax year.¹

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

ISSUE²

Whether appellants have established a basis to abate the late-payment penalty.

FACTUAL FINDINGS

1. On April 18, 2022, appellants scheduled an electronic payment of their 2021 tax liability using respondent’s Web Pay system.

¹ This amount consists of a \$3,365.53 late-payment penalty and a \$2,399 estimated tax penalty.

² Although appellants included the estimated tax penalty in the disputed amount when filing this appeal, appellants provide no argument or evidence pertaining to this item. Therefore, the estimated tax penalty will not be addressed further.

2. Appellants had sufficient funds in their bank account at this time to cover the scheduled payment.
3. The payment, however, was unsuccessful because appellants entered an invalid bank account number.
4. On June 7, 2022, respondent informed appellants that the taxes had not been fully paid and consequently, a late-payment penalty was imposed.
5. Appellants paid the balance due and filed a refund claim seeking penalty abatement.
6. Respondent denied the claim and this timely appeal followed.

DISCUSSION

Appellants do not dispute that they paid their 2021 tax liability late nor do appellants take issue with respondent's calculation of the penalty amount. Appellants instead ask that the penalty be abated because they had sufficient funds in their bank account at the time their April 18, 2022 electronic payment was scheduled. Appellants also contend that the error in entering their bank account information was due to an inadvertent mistake and that appellants have taken steps to ensure that this error will not occur again.

R&TC section 19132 provides that a late-payment penalty shall be imposed when a taxpayer fails to pay the amount shown as due on the return on or before the due date of the return. However, the late-payment penalty may be abated if the failure to timely pay was due to reasonable cause and not willful neglect. (R&TC, § 19132(a)(1).) To establish reasonable cause for abating the penalty, a taxpayer must show that the failure to timely pay occurred despite the exercise of ordinary business care and prudence; that is, appellants acted as an ordinarily intelligent and prudent businessperson would have given the circumstances. (*Appeal of Scanlon*, 2018-OTA-075P.)

It is clear from the record that the late payment was caused by a lack of due care and not circumstances outside appellants' control. For instance, it does not appear appellants took the reasonable and prudent step of verifying their bank account information when scheduling their electronic payment. (*Appeal of Friedman*, 2018-OTA-077P [late payment caused by an oversight or mistake does not constitute reasonable cause].) Appellants also did not exercise ordinary business care and prudence when they failed to monitor their bank account to verify that their scheduled electronic payment had been successfully processed. (*Appeal of Scanlon*, *supra*.) Although appellants had sufficient funds in their account to ensure that their electronic payment

would not be dishonored and may have taken further action to prevent future payment errors from occurring, these actions, while commendable, do not excuse appellants' failure to take all the necessary and prudent steps to ensure that their 2021 tax liability would be timely paid.

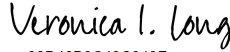
Accordingly, appellants have not shown reasonable cause for abating the penalty.

HOLDING


Appellants have not established a basis to abate the late-payment penalty.


DISPOSITION

Respondent's action is sustained.

Signed by:

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Veronica I. Long
Administrative Law Judge

We concur:

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Kenneth Gast
Administrative Law Judge

DocuSigned by:

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Sara A. Hosey
Administrative Law Judge

Date Issued: 8/21/2024