

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 240215355  
**LUMINELLO, INC.** )  
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**OPINION**

Representing the Parties:

For Appellant: Kenneth Braslow, CEO

For Respondent: David C. Cortez, Associate Governmental Program Analyst

For Office of Tax Appeals: Nguyen Dang, Attorney

J. ALDRICH, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Luminello, Inc. (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$18,600 for the 2023 tax year.

Appellant waived the right to an oral hearing; therefore, the matter was submitted to the Office of Tax Appeals (OTA) on the written record pursuant to California Code of Regulations, title 18, section 30209(a).

**ISSUE**

Whether appellant has established reasonable cause to abate the dishonored payment penalty.

**FACTUAL FINDINGS**

1. On September 1, 2023, appellant scheduled an estimated tax payment for December 15, 2023, using respondent’s electronic Web Pay system.
2. The payment was unsuccessful due to insufficient funds.
3. Respondent imposed a dishonored payment penalty upon appellant.
4. Appellant paid the balance due and filed a refund claim seeking abatement of the penalty.

5. Respondent denied the claim.
6. This timely appeal followed.

### DISCUSSION

A penalty is imposed upon a payor who submits an electronic payment which is dishonored. (R&TC, § 19134(a) & (b), incorporating with some modification Internal Revenue Code, § 6657.) The penalty, however, does not apply if the electronic payment was submitted in good faith and with reasonable cause to believe it would be duly paid. (*Ibid.*) The term “reasonable cause” is not defined in the statute. However, in the context of penalties containing a reasonable cause exception, OTA has generally construed the term to be synonymous with the exercise of ordinary business care and prudence. (*Appeal of Porreca*, 2018-OTA-095P.) To prevail, appellant must therefore show that the payment was dishonored despite the exercise of ordinary business care and prudence. (See *ibid.*)

Appellant argues the penalty should be abated because it had sufficient funds to cover the payment but due to a “significant business transaction,” appellant was forced to change bank accounts and inadvertently forgot to cancel or revise the previously scheduled payment. Appellant asserts it made a corrective payment immediately upon learning of the dishonored payment and “conducted internal training and [implemented] a system of double-checks . . . to prevent this mistake from happening again.”

Appellant provides no evidence to support its claims. Appellant’s failure to produce evidence that is within its control gives rise to an adverse inference; in other words, that if the evidence were provided, it would be unfavorable to appellant’s position. (*Appeal of Bindley*, 2019- OTA- 179P.) Moreover, appellant’s contentions do not establish reasonable cause for abating the penalty because they fail to address what steps, if any, appellant took to ensure that the payment would be successful.

Instead, the actions taken by appellant after discovering that the payment had been dishonored suggest that appellant did not have adequate training for its staff or procedures in place when submitting the payment and that it was dishonored due to a mere oversight, which appellant appears to acknowledge. The failure to comply with the requirements of the law due to an oversight does not, by itself, constitute reasonable cause. (See *Appeal of Friedman*, 2018-OTA-077P.)

Insofar as appellant was engaged in a significant business transaction which may have made it more difficult for appellant to ensure the payment would be successful, the selective inability to perform tax obligations while participating in regular business activities also does not

constitute reasonable cause. (See *Appeal of Head and Feliciano*, 2020-OTA-127P [difficulties constituting reasonable cause must be of a severe enough nature to preclude a taxpayer from exercising ordinary business care and prudence].)


Finally, while the remedial actions taken by appellant are commendable, the statute does not provide for abating the penalty based solely on the exercise of ordinary business care and prudence *after* a payment has been dishonored.

HOLDING


Appellant has not established reasonable cause to abate the dishonored payment penalty.


DISPOSITION

Respondent's action is sustained.

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Josh Aldrich  
Administrative Law Judge

We concur:

Signed by:  
  
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Kim Wilson  
Hearing Officer

DocuSigned by:  
  
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Erica Parker  
Hearing Officer

Date Issued: 2/7/2025