

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 231214868
PIILANI GARDENS, LLC)
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OPINION

Representing the Parties:

For Appellant: Scott Golditch, Representative

For Respondent: Alisa Pinarbasi, Attorney

K. SHELTON, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Piilani Gardens, LLC (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$4,484.94¹ for the 2021 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 penalty for the late payment of tax imposed under R&TC section 19132.

FACTUAL FINDINGS

1. Appellant, through its agent, Mr. Cole, attempted to pay its tax liability for the 2021 tax year of \$69,000 (Tax Liability) on March 8, 2022 by making an electronic funds transfer on FTB’s “WebPay” system. Mr. Cole received an email from “FTB Webpay” on March 8, 2022, with a subject line of “Confirmation Web Pay Scheduled” and a confirmation number for the payment (Confirmation Email). The Confirmation Email also

¹ FTB’s Notice of Action on appellant’s claim for refund states that the amount of appellant’s claim is \$5,109.18. However, appellant is not appealing the interest on the penalty, which is included in the amount of \$5,109.18. Therefore, the amount of the claim for refund on appeal is \$4,484.94.

- notes (in relevant part) that, “If . . . the banking information you entered is incorrect, . . . your financial institution may reject your request Allow up to 2 business days from the payment date for your bank account to reflect your payment. To confirm your payment has been cleared, review your bank account statement or contact your bank.”
2. Appellant’s attempted electronic funds transfer payment was unsuccessful, however, because appellant’s account number for its bank account with Bank of Hawaii was incorrectly entered into the WebPay system, and the payment was dishonored for “invalid account information.”
 3. FTB did not notify appellant that the attempted payment was unsuccessful.
 4. Once appellant determined that its attempted payment of the Tax Liability was unsuccessful, it made a payment to FTB effective on May 31, 2022 for the full amount of its Tax Liability.
 5. Appellant timely filed its Form 568 Limited Liability Company Return of Income (return) for the 2021 tax year on September 1, 2022. On its return, appellant reported a tax and fee liability of \$69,799, the payment of tax of \$69,000, and a credit of \$800 from an overpayment from a prior year. Appellant is classified as a partnership.
 6. FTB asserted a penalty for the failure to timely pay of \$3,449.95 under R&TC section 19132(a)(2)(A) and a monthly penalty of \$1,034.99 under R&TC section 19132(a)(2)(B).
Appellant paid the penalties and interest of \$5,076.50 by check dated September 7, 2023.
 7. On September 26, 2023, appellant filed a Reasonable Cause – Business Entity Claim for refund (Claim) with FTB (dated September 7, 2023) in which it claimed a refund of \$5,076.50 for the penalties and interest paid.
 8. On November 14, 2023, FTB issued appellant a Notice of Action in which it denied appellant’s Claim.
 9. On November 30, 2023, appellant timely filed an appeal with OTA (Appeal).

DISCUSSION

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.) For the 2021 taxable year, the filing and payment due date for an LLC that is classified as a partnership was March 15, 2022. (R&TC, § 18633.5.)

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. The late payment penalty has two parts: (1) a penalty equal to 5 percent of the unpaid tax; and (2) a penalty equal to 0.5 percent of the unpaid tax per month, or portion of a month (not to exceed 40 months). (R&TC, § 19132(a)(2)(A) & (B).)

The late payment penalty may be abated if a taxpayer shows that the failure to make a timely payment of tax was due to reasonable cause and not due to willful neglect. (R&TC, § 19132(a).) To establish reasonable cause for a late payment of tax, a taxpayer must show that the failure to make a timely payment of the proper amount of tax occurred despite the exercise of ordinary business care and prudence, and that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Appeal of Rougeau*, 2021-OTA-335P, citing *Appeal of Triple Crown Baseball*, 2019-OTA-025P.) The burden of proving that the taxpayer acted with reasonable cause and not willful neglect is on the taxpayer. (Cal. Code Regs., tit. 18, § 30219(a).)

It is undisputed that appellant paid its Tax Liability on May 31, 2022, which was three months (or portions of a month) after the payment due date of March 15, 2022. (See R&TC, § 18633.5.) Therefore, FTB properly imposed the penalty. Thus, the issue is whether appellant has reasonable cause for its late payment of the Tax Liability.

Appellant and FTB provide different facts for why appellant's attempted electronic funds transfer payment using the WebPay system was unsuccessful. Appellant has stated that it was because it incorrectly inserted a dash in between the bank account numbers that it entered into the system. FTB has stated that appellant failed to enter all ten digits of its bank account number. Regardless of the exact reason for the unsuccessful payment, the mistake was appellant's error. It is appellant's responsibility to make a timely payment, and the fact that FTB did not provide notice to appellant of the unsuccessful payment is irrelevant. (See *Appeal of Scanlon*, 2018-OTA-075P.)

Appellant argues that the Confirmation Email from the WebPay system confirms its payment. However, the Confirmation Email cautions appellant to "[a]llow up to 2 business days from the payment date for your bank account to reflect your payment" and to "review your bank account statement" to confirm that the payment cleared. Appellant failed to heed the cautions in the Confirmation Email.

Appellant argues in the Appeal that it mailed a check to pay the Tax Liability once it realized that the payment had not hit its bank account. Appellant made a payment effective on May 31, 2022, which is 11 weeks after it attempted to pay using the WebPay system on

March 8, 2022. Failing to confirm payment of the Tax Liability for approximately 11 weeks is not ordinary business care and prudence.

It is commendable that appellant discovered its own mistake and fully paid its Tax Liability. However, appellant’s delay in confirming its timely payment of the Tax Liability is not indicative of the exercise of ordinary business care and prudence.


As to appellant’s request for one-time abatement based on its compliance history, OTA lacks authority to grant the requested relief. R&TC section 19132.5 authorizes one-time abatement of timeliness penalties for *individual* filers with a good filing history for tax years starting on and after January 1, 2022. Here, appellant is a business entity, not an individual filer, and one-time abatement does not apply to the 2021 tax year. Thus, OTA is not authorized to grant appellant’s request for a one-time abatement.

HOLDING


Appellant has not established reasonable cause to abate the penalty for the late payment of tax imposed under R&TC section 19132.


DISPOSITION

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

Signed by:

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L. Katrine Shelton
Administrative Law Judge

We concur:

Signed by:

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Veronica I. Long
Administrative Law Judge

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7B17E958B7C14AC...
Amanda Vassigh
Administrative Law Judge

Date Issued: 11/19/2025