DocuSign Envelope ID: 20B2C958-228B-4618-A75E-50ED020D3D7D

2019 – OTA – 255
Nonprecedential

OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **CANDUSA CORPORATION**	OTA Case No. 18042835 Date Issued: September 26, 2019

OPINION

Representing the Parties:

For Appellant: Raining Y. Liu, Senior Vice President

For Respondent: Gi Nam, Tax Counsel

For Office of Tax Appeals: Louis Gabriel, Graduate Student Assistant

D.BRAMHALL, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, Candusa Corporation (appellant) appeals an action by the respondent Franchise Tax Board (respondent) denying appellant's claim for refund of $1,767.46[1] for the 2016 tax year.

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

ISSUES

1. Whether appellant has established reasonable cause for failing to remit payments by electronic funds transfer (EFT) pursuant to R&TC section 19011.
2. Whether appellant is entitled to the abatement of the collection cost recovery fee.

FACTUAL FINDINGS

1. On December 15, 2015, appellant made an estimated tax payment of $23,000, which began appellant's requirement to make all future payments via EFT. Respondent's

[1] This amount consists of an electronic funds transfer penalty of $1,380 and a collection cost recovery fee of $365. It also includes interest of $22.46. Appellant did not provide a specific contention regarding interest abatement for the 2016 tax year, and we find no apparent grounds for interest relief under the facts, so we do not further address that issue.

DocuSign Envelope ID: 20B2C958-228B-4618-A75E-50ED020D3D7D

records indicate that on January 11, 2016, respondent mailed to appellant's Camino Ramon address on file an Electronic Funds Transfer Program Mandatory Participation Notice (Mandatory Participation Notice), advising appellant that all future payments must be made by EFT effective February 28, 2016.

2. On March 11, 2016, respondent received an estimated tax payment from appellant of $9,081 by check. On March 24, 2016, respondent issued a Notice of Balance Due, notifying appellant that respondent had assessed an EFT penalty of $908.10, which was due by April 8, 2016. Respondent sent the notice to appellant's address on file. Appellant forwarded the notice to its accountant, who advised appellant to disregard the notice.

3. Because appellant did not pay the penalty imposed in the March 24, 2016 notice, respondent issued a past due notice to the Camino Ramon address on May 6, 2016. On May 10, 2016, appellant forwarded the notice to its accountant. The next day, appellant's accountant requested abatement of the penalty imposed in the March 24, 2016 notice by letter and stated: "From now on, taxpayer will make payment online." Respondent granted the request to abate the $908.10 penalty on July 8, 2016.

4. On June 3, 2016, respondent received an estimated tax payment of $13,800 from appellant by check. Respondent imposed a penalty for failing to make that payment by EFT, totaling $1,380. Respondent issued appellant Corporation Final Notices Before Levy on October 12, 2016 and October 17, 2016, consisting of an EFT penalty of $1,380, plus interest. The notices informed appellant that if respondent did not receive payment in full within 30 days from the notice dates, respondent may, among other things, impose a collection cost recovery fee. Receiving no payment by the due dates, respondent subsequently imposed a collection cost recovery fee of $365.

5. Appellant's accountant requested abatement of the second EFT penalty by letter on October 21, 2016 and stated that appellant had completed the account registration and would make payments online from then on.

6. On December 28, 2016, respondent levied appellant's bank account in the amount of $1,767.46, representing the EFT penalty of $1,380, a collection cost recovery fee of $365, and applicable interest.

DocuSign Envelope ID: 20B2C958-228B-4618-A75E-50ED020D3D7D

7. On August 24, 2017, appellant filed a claim for refund. Respondent denied appellant's claim in a letter dated December 22, 2017.
8. This timely appeal followed.

DISCUSSION

Issue 1 – Whether appellant has established reasonable cause for failing to remit payments by EFT pursuant to R&TC section 19011.

R&TC section 19011 requires certain corporations to submit their payments electronically or be subject to a mandatory e-pay penalty. Payments by EFT are required of corporations if they make an estimated tax or extension payment of more than $20,000 on or after January 1, 1995, or if they file an original tax return with a tax liability over $80,000 for any tax year beginning on or after that date. (Rev. & Tax. Code, § 19011, subd. (a).) An EFT means "any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape, so as to order, instruct, or authorize a financial institution to debit or credit an account." (Rev. & Tax. Code, § 19011, subd. (f)(1).) A taxpayer who has become subject to the e-pay requirement must continue to make all future payments electronically, unless the taxpayer either meets the requirements of R&TC section 19011, subdivision (b), and makes an election to discontinue e-pay,[2] or the taxpayer requests and receives a waiver of the e-pay requirement pursuant to R&TC section 19011, subdivision (d). R&TC section 19011, subdivision (c), imposes a 10-percent e-pay penalty on a taxpayer who does not comply with this e-pay requirement unless the taxpayer shows that the failure to make the e-payment was the result of reasonable cause and was not due to willful neglect.

R&TC section 19011 does not specify what circumstances will establish "reasonable cause" or a lack of "willful neglect," but the same terms are used to describe the bases for relief of other penalties (e.g., the late-filing and late-payment penalties of R&TC sections 19131 and 19132, respectively), and it is appropriate to look to cases that discuss those penalties for guidance.[3] To demonstrate reasonable cause in the context of late-filing penalties, a taxpayer

[2] R&TC section 19011, subdivision (b), allows taxpayers that are required to make payments by EFT to elect to discontinue the method where the threshold requirements of R&TC section 19011, subdivision (a), were not met in the prior taxable year.

[3] See *Appeal of Porreca,* 2018-OTA-95P.

DocuSign Envelope ID: 20B2C958-228B-4618-A75E-50ED020D3D7D

must show that the failure to file timely returns occurred despite the exercise of ordinary business care and prudence. (*Appeal of Howard G. and Mary Tons* (79-SBE-027) 1979 WL 4068.) The taxpayer bears the burden of proving reasonable cause to excuse the penalty. (*Appeal of Winston R. Schwyhart* (75-SBE-035) 1975 WL 3519.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Aaron and Eloise Magidow* (82-SBE-274) 1982 WL 11930.)

Ignorance of the law is not reasonable cause for failure to comply with statutory requirements. (*Appeal of Diebold, Inc.* (83-SBE-002) 1983 WL 15389.) A taxpayer does not exercise ordinary business care and prudence when it fails to acquaint itself with the requirements of California tax law. (*Ibid.*) Similarly, a taxpayer's reliance on a tax expert does not constitute reasonable cause for failure to comply with an unambiguous statute. (*United States v. Boyle* (1985) 469 U.S. 241, 251-252.) Willful neglect is a conscious, intentional failure to do something that is required or to avoid doing something that is prohibited, or a reckless indifference to the requirement or prohibition. (*Id.* at p. 245.)

It is undisputed that appellant made the estimated payment on June 3, 2016 by check. Appellant did not file an election under R&TC, section 19011, subdivision (b), to pay by check, and appellant did not request, and respondent did not grant, a waiver from the EFT requirements under R&TC, section 19011, subdivision (d). Appellant contends that it relied on an accountant to prepare its tax returns who advised appellant to make the estimated payments in 2016 with a check and also to disregard the two notices that were issued following appellant's March 11, 2016 payment. Appellant states that it was not aware that these notices related to a requirement to pay via EFT when appellant made its June 3, 2016 payment by check. Appellant also initially notes that it now understands the basis of the penalty at issue but does not want to further discuss the cause. Thereafter, appellant asserts that it "was because [appellant] was misled by third party CPA firm and was not properly informed about this mandatory requirement until the second penalty was received. In another word, this failure occurred despite the exercise of ordinary business care and prudence."

A taxpayer's reliance on its accountant's advice or lack thereof does not constitute reasonable cause for failure to comply with the EFT payment requirement. (See *United States v. Boyle*, *supra*, 469 U.S. 241, 251-253; *Appeal of Porreca*, 2018-OTA-095P.) While there may have been a breakdown in communications between appellant and its accountant, that alone is

DocuSign Envelope ID: 20B2C958-228B-4618-A75E-50ED020D3D7D

not adequate to establish reasonable cause for its failure to comply. As noted above, reliance on the advice of a tax expert cannot function as a substitute for compliance with an unambiguous statute. (*United States v. Boyle*, *supra*, 469 U.S. 241, 251). Like the filing due date statute at issue in *Boyle*, interpreting R&TC section 19011 does not require the assistance of a tax expert. Respondent sent a Mandatory Participation Notice to appellant's last known address on or about January 11, 2016 informing it of the EFT requirements commencing on February 28, 2016, and the March 24, 2016 notice appellant received indicated that the balance was related to an "EFT PENALTY." Further, on May 11, 2016, the appellant's representative had requested abatement of the first EFT penalty. It is clear that when the June 3, 2016 payment was made, the exercise of ordinary business care and prudence would require appellant to ensure all future payments to respondent were remitted electronically.

Although appellant states that none of its employees received the Mandatory Participation Notice sent on or about January 11, 2016, informing them of the EFT requirement, R&TC section 18416 provides that any notice mailed to a taxpayer shall be sufficient if mailed to the taxpayer's last-known address, which is the address that appears on the taxpayer's last return filed with respondent, unless the taxpayer has provided clear and concise written or electronic notification of a different address. Here, appellant's last-known address was the Camino Ramon address used on its 2014 Amended Corporation Franchise or Income Tax Return, filed on November 15, 2015. This is the same address at which appellant received the March 24 and May 6, 2016 notices, both of which appellant forwarded to its accountant. When the June 3, 2016 payment was made, appellant's employees should have been aware of the EFT requirement, as respondent's correspondence had been received by appellant, and its accountant had interacted with respondent regarding appellant's electronic payment requirement. However, the law provides that even if appellant was not aware of the requirement to pay by EFT, ignorance of the law is not sufficient to demonstrate reasonable cause. (*Appeal of Diebold, Inc., supra*.)

Issue 2 – Whether appellant is entitled to the abatement of the collection cost recovery fee.

R&TC section 19254, subdivision (a)(1), provides that respondent shall impose a collection cost recovery fee if a taxpayer fails to timely pay a liability for taxes, penalties, or interest after respondent mails a notice to the taxpayer requesting payment, and the notice advises that the continued failure to pay the amount due may result in, among other things, the

DocuSign Envelope ID: 20B2C958-228B-4618-A75E-50ED020D3D7D

imposition of a collection cost recovery fee. Once respondent properly imposes the fee, there is no language in the statute that would excuse the fee for any reason, including reasonable cause. (See *Appeal of Michael E. Myers* (2001-SBE-001) 2001 WL 37126924.)

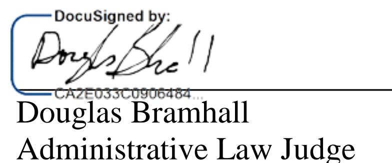
Here, respondent mailed appellant two Corporation Final Notices Before Levy, dated October 12, 2016, and October 17, 2016, which stated that if appellant failed to pay the balance due within 30 days, respondent may impose a collection cost recovery fee. Appellant did not pay the balance due within 30 days. Accordingly, respondent properly imposed the collection cost recovery fee and collected the balance due. Once a collection cost recovery fee is imposed, there is no authority for abating it. Appellant is therefore not entitled to an abatement of the collection cost recovery fee.

HOLDINGS

1. Appellant has not established reasonable cause for failing to remit payments by EFT pursuant to R&TC section 19011.
2. Appellant is not entitled to the abatement of the collection cost recovery fee.

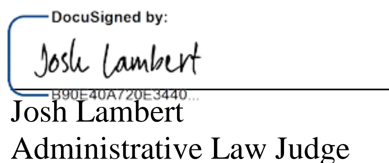
DISPOSITION

Respondent's action is sustained.

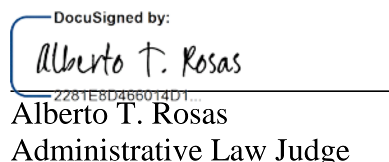


Douglas Bramhall
Administrative Law Judge

We concur:



Josh Lambert
Administrative Law Judge



Alberto T. Rosas
Administrative Law Judge