

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 20126983
S. RAM AND)
S. VENKATESWARAN)
_____)

OPINION

Representing the Parties:

For Appellants: S. Ram and S. Venkateswaran

For Respondent: Joel M. Smith, Tax Counsel III

For Office of Tax Appeals: David Kowalczyk, Tax Counsel

A. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, S. Ram and S. Venkateswaran (appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$1,905.48¹ for payments made in 2020.²

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

ISSUE³

Whether appellants have established reasonable cause to abate the mandatory electronic payment (e-pay) penalties.

¹ FTB denied appellants’ claim for refund for \$1,905.48, which includes three mandatory e-pay penalties of \$1,295.37, \$526.66, and \$83.45. However, FTB agrees to refund the \$1,295.37 mandatory e-pay penalty, plus interest. Accordingly, the total amount in dispute is \$610.11 (\$83.45 + \$526.66). Additionally, although the amount of \$686.60 is not at issue in this appeal, FTB has conceded to refund this overpayment to appellants.

² FTB applied the mandatory e-pay penalties to appellants’ account for tax year 2019 even though appellants’ payments were for tax years 2019 and 2020 because the mandatory e-pay penalty does not apply to any specific tax year. (R&TC, § 19011.5(a) & (c).) Accordingly, the tax year to which FTB applied the penalties is not relevant in this appeal.

³ Because appellants have not asserted any arguments for abating interest, interest will not be addressed separately here and will only be abated if the underlying liabilities upon which interest accrued are abated.

FACTUAL FINDINGS

1. On May 2, 2019, FTB issued a Mandatory Electronic Payment Notice informing appellants that they will be required to electronically remit all future payments pursuant to R&TC section 19011.5. FTB informed appellants that it would impose a 1 percent penalty on the amount paid for failure to electronically remit the payment.
2. Beginning on June 28, 2019, FTB required appellants to remit their tax payments electronically.
3. On July 15, 2020, appellants remitted a tax payment of \$8,345 by personal check for tax year 2019 and a tax payment of \$52,666 by personal check for tax year 2020.
4. Thereafter, FTB issued State Income Tax Balance Due Notices notifying appellants that FTB imposed a mandatory e-pay penalty and interest of \$83.52 and \$610.63 for the remitted personal checks of \$8,345 and \$52,666, respectively.
5. On August 17, 2020, appellants fully paid the mandatory e-pay penalties, plus interest.
6. Appellants filed their claim for refund requesting FTB abate the mandatory e-pay penalties because they were not aware of the mandatory e-pay requirements. FTB denied appellants' claim for refund.
7. Thereafter, appellants timely filed this appeal.

DISCUSSION

A taxpayer must electronically remit all future payments to FTB, regardless of the taxable year to which the payments apply, after the taxpayer has made an estimated tax payment in excess of \$20,000 or the taxpayer's total tax liability exceeds \$80,000 in any taxable year. (R&TC, § 19011.5(a).) In addition, electronic payments for all future payments become mandatory. Any taxpayer required to electronically remit payment who makes payment by other means must pay a penalty of 1 percent of the amount paid, unless it is shown that the failure to make an electronic payment was for reasonable cause and was not the result of willful neglect. (R&TC, § 19011.5(c).)

To establish reasonable cause to abate the mandatory e-pay penalty, a taxpayer has the burden of proof to establish that the failure to electronically remit a required payment occurred despite the exercise of ordinary business care and prudence. (*Appeal of Porreca*, 2018-OTA-095P.) Ignorance of the law is not reasonable cause for failure to comply with the mandatory e-

pay requirements. (*Ibid.*) Generally, a taxpayer's error attributable to an oversight is not reasonable cause. (*Appeal of Friedman*, 2018-OTA-077P.)⁴ Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Porreca*, *supra.*)

Here, appellants were required to begin electronically remitting their payments to FTB on June 28, 2019. FTB imposed \$83.45 (\$8,345 x 1 percent) and \$526.66 (\$52,666 x 1 percent) penalties because appellants remitted their tax payments of \$8,345 and a \$52,666 by personal check on July 15, 2020, which is nearly one year after appellants were required to electronically remit their tax payments. Accordingly, FTB properly imposed and calculated the mandatory e-pay penalties.

Appellants argue that they did not electronically remit their tax payments because they were not aware of the mandatory e-pay requirements. However, FTB informed appellants of their duty to begin electronically remitting tax payments on May 2, 2019, and ignorance of the law does not establish reasonable cause to abate the mandatory e-pay penalty. (*Appeal of Porreca*, *supra.*)

Appellants state that they made several mistakes when preparing their tax returns because COVID-19 delayed them from filing their tax returns and request leniency based on these circumstances. Although we are sympathetic to appellants' situation, we are bound to decide the appeal according to the law. Appellants have not explained or established how COVID-19 prevented them from electronically remitting their payments. In addition, any error attributable to appellants' oversight is generally not reasonable cause. (*Appeal of Friedman*, *supra.*)

Therefore, appellants have not established reasonable cause to abate the mandatory e-pay penalties.


⁴ The issue of whether a taxpayer has demonstrated reasonable cause for mandatory e-pay penalty asks the same questions and weighs the same evidence as the issue of whether reasonable cause exists for failure to timely file a tax return or the failure to make a timely payment of tax. (*Appeal of Porreca*, *supra.*)

HOLDING

Appellants have not established reasonable cause to abate the mandatory e-pay penalties.

DISPOSITION

Appellants are entitled to a refund of \$1,295.37, as conceded by FTB. FTB’s action is otherwise sustained.

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Andrea L.H. Long
Administrative Law Judge

We concur:

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Nguyen Dang
Administrative Law Judge

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Huy “Mike” Le
Administrative Law Judge

Date Issued: 11/30/2021