

**OFFICE OF TAX APPEALS  
STATE OF CALIFORNIA**

In the Matter of the Appeal of: ) OTA Case No. 21047702  
D. SOARES AND )  
J. SOARES )  
\_\_\_\_\_ )

**OPINION**

Representing the Parties:

For Appellants: Bryant L. Jolley, CPA

For Respondent: Camille Dixon, Tax Counsel  
Cynthia D. Kent, Tax Counsel IV

S. HOSEY, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, D. Soares (appellant-husband) and J. Soares (appellant-wife) (collectively, appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants’ claim for refund of \$1,505.56 for the 2018 tax year.

Office of Tax Appeals Administrative Law Judges Sara A. Hosey, Josh Aldrich, and Teresa A. Stanley held an oral hearing for this matter virtually via Webex on March 29, 2022. At the conclusion of the hearing, the record was closed, and this matter was submitted for an opinion.

**ISSUE**

Whether appellants have met their burden of proof to establish reasonable cause to abate the mandatory electronic payment (e-pay or e-payment) penalty on the January 4, 2021 tax payment.

**FACTUAL FINDINGS**

1. For the 2020 tax year, appellants’ estimated tax exceeded \$20,000. Appellants sent FTB a check as payment on January 4, 2021.

2. FTB imposed a mandatory 1 percent e-pay penalty of \$1,500.74 because appellants were required to make electronic payments pursuant to R&TC section 19011.5.
3. FTB sent appellants a State Income Tax Balance Due Notice stating that \$1,500.74 remained to be paid and that all payments must be made electronically. Appellants submitted a payment of \$1,500.74 satisfying their full balance due on January 26, 2021.
4. Appellants filed their claim for refund requesting FTB abate the mandatory e-pay penalty because of a communication error, and it was their first time required to make estimated payments. FTB denied appellants' claim for refund.
5. Thereafter, appellants timely filed this appeal.

### DISCUSSION

A taxpayer must electronically remit payments to FTB, regardless of the taxable year to which the payments apply, if 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 tax year. (R&TC, § 19011.5(a).) In addition, electronic payments for all future payments become mandatory unless the taxpayer either meets the requirements of R&TC section 19011.5(b) and makes an election to discontinue e-pay, or the taxpayer requests and receives a waiver of the e-pay requirement pursuant to R&TC section 19011.5(d). (*Appeal of Porreca*, 2018-OTA-095.) 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, supra.*) 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.)<sup>1</sup>

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<sup>1</sup> 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 file a tax return or the failure to make a timely payment of tax. (*Appeal of Porreca, supra.*)

Here, appellants were required to electronically remit payments for the 2020 tax year because their estimated tax exceeds \$20,000. FTB imposed a penalty because appellants remitted their January tax payment by check. Accordingly, FTB properly imposed the mandatory e-pay penalty.

Appellants argue that they did not electronically remit their tax payments because there was a misunderstanding with the paper estimates printed by their CPA, and it should be abated as it was their first year to pay estimated tax payments. Appellants' CPA argued that his office accidentally printed paper payment vouchers and gave them to appellant-husband but told him he must get rid of the paper and pay electronically. Appellant-husband did not destroy the paper payment vouchers, gave the packet to appellant-wife, and told her to pay it electronically. Appellant-wife saw the paper payment vouchers and used them to pay by check. However, ignorance of the law does not establish reasonable cause to abate the mandatory e-pay penalty. (*Appeal of Porreca, supra.*) Furthermore, any error attributable to appellants' oversight is generally not reasonable cause. (*Appeal of Friedman, supra.*) Appellants were told by their tax professional to ignore the paper payment vouchers and to pay electronically, and appellant-husband told appellant-wife to pay electronically as well. If there was still confusion, a person exercising ordinary business care and prudence would have confirmed with their CPA or with their spouse. Therefore, appellants' oversight in this case does not rise to reasonable cause.

Finally, we acknowledge that appellants appear to have a history of timely tax payments and note that the IRS has a penalty abatement program called First Time Abate, under which the IRS may administratively abate penalties for late payment and late filing. Appellants' CPA stated at the hearing that his other clients had their penalties abated for similar reasons, but we are unaware of those taxpayers' factual circumstances and no evidence was presented supporting those contentions. Neither the California Legislature nor FTB have adopted a comparable penalty abatement program, so the IRS penalty abatement program and appellants' history of timely filing and paying California taxes cannot alone be used as a basis for abatement of the e-payment penalty at issue here. Instead, appellants must establish that their failure to timely pay their taxes was due to reasonable cause and not due to willful neglect, which they have failed to do.

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

HOLDING

Appellants have not met their burden of proof to establish reasonable cause to abate the mandatory e-payment penalty.

DISPOSITION

FTB is sustained in full.

DocuSigned by:  
*Sara A. Hosey*  
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Sara A. Hosey  
Administrative Law Judge

We concur:

DocuSigned by:  
*Josh Aldrich*  
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Josh Aldrich  
Administrative Law Judge

DocuSigned by:  
*Teresa A. Stanley*  
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Teresa A. Stanley  
Administrative Law Judge

Date Issued: 6/9/2022