

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 21088419
S. PRIYADARSHI AND)
A. PRIYADARSHI)
_____)

OPINION

Representing the Parties:

For Appellants: S. Priyadarshi
For Respondent: Alisa Pinarbasi, Tax Counsel
Maria Brosterhaus, Tax Counsel IV

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, S. Priyadarshi and A. Priyadarshi (appellants) appeal an action by Franchise Tax Board (respondent) denying appellants’ claim for refund of \$2,000, plus interest, for the 2020 taxable year.

Office of Tax Appeals Administrative Law Judges Sheriene Anne Ridenour, Asaf Kletter, and Tommy Leung held an electronic hearing for this appeal on June 29, 2022. At the conclusion of the hearing, the record was closed, and this appeal was submitted for an opinion.

ISSUES

1. Whether the electronic payment (e-pay) penalty should be abated.
2. Whether interest should be abated.

FACTUAL FINDINGS

1. Appellants made their 2020 fourth quarter estimated tax payment (due on January 15, 2021) of \$200,000 by check dated December 30, 2020, which respondent credited to their account on January 4, 2021.
2. Respondent notified appellants that because they were required to make this payment electronically, a 1 percent penalty (e-pay penalty) was being imposed.

3. After appellants protested and subsequently paid the e-pay penalty, plus interest, they filed a claim for refund, which respondent denied.
4. Appellants were required to e-pay since November 2019.

DISCUSSION

Issue 1: Whether the e-pay penalty should be abated.

E-payments are required of individual taxpayers if they make an estimated tax or extension payment of more than \$20,000 or if they file an original tax return with a tax liability over \$80,000. (R&TC, § 19011.5(a).) In addition, an individual 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 19011.5(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). A 1 percent e-pay penalty is imposed if the e-pay requirement is not satisfied, unless the taxpayer shows that the failure to e-pay was the result of reasonable cause and was not due to willful neglect. (R&TC, § 19011.5(c); *Appeal of Porreca*, 2018-OTA-095P.)

Although R&TC section 19011.5 does not tell us what circumstances will establish “reasonable cause” or a lack of “willful neglect,” and there are few e-pay cases to provide guidance in this regard, 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. In order to demonstrate reasonable cause in the context of late-filing penalties, the taxpayer must show the failure to file timely returns occurred despite the exercise of ordinary business care and prudence. (*Appeal of Porreca, supra.*) The taxpayer bears the burden of proving reasonable cause to excuse the penalty. Unsupported assertions are not sufficient to satisfy a taxpayer’s burden of proof. (*Ibid.*)

Ignorance of the law is not reasonable cause for failure to comply with statutory requirements. A taxpayer does not exercise ordinary business care and prudence when he fails to acquaint himself with the requirements of California tax law. (*Ibid.*) 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. (*United States v. Boyle* (1985) 469 U.S. 241, 245.)

When appellants' 2020 fourth quarter estimated tax payment was due, the world was in the midst of Covid-19, and appellant-husband found himself traveling overseas to tend to a sick relative. Appellants explain that at the time of appellant-husband's departure, they had insufficient funds in their bank account to e-pay, so a check was drawn and left with appellant-wife to remit to respondent when funds were later made available. Furthermore, appellants explained that there were many travel restrictions, and conditions where the sick relative lived were fluid with no guarantee of reliable internet service. Appellants also indicated that appellant-wife did not have access to their bank account information. There is no dispute that appellants' 2020 fourth quarter estimated tax payment was timely. However, appellants could have scheduled their e-payment for a date when funds would be available upon remittance. Under these circumstances, while there is no evidence of willful neglect, there is also no showing of reasonable cause in accordance with the law as outlined above. Thus, the e-pay penalty cannot be abated.

Issue 2: Whether interest should be abated.

The imposition of interest is mandatory. (R&TC, § 19101(a).) Interest is not a penalty but is compensation for a taxpayer's use of money which should have been paid to the state. (*Appeal of Moy*, 2019-OTA-057P.)


There is no reasonable cause exception to the imposition of interest. To obtain relief from interest a taxpayer must qualify under one of the waiver provisions of R&TC sections 19104 (pertaining to unreasonable error or delay by respondent in the performance of a ministerial or managerial act), 19112 (pertaining to extreme financial hardship caused by significant disability or other catastrophic circumstance), or 21012 (pertaining to reasonable reliance on the written advice of a legal ruling by respondent's chief counsel). (*Appeal of Moy*, *supra*.) Appellants have not alleged, and the record does not reflect, that any of these waiver provisions are applicable here. Hence, interest cannot be abated.

HOLDINGS

1. The e-pay penalty cannot be abated.
2. Interest cannot be abated.

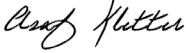
DISPOSITION

Respondent’s action is sustained.


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 Tommy Leung
 Administrative Law Judge

We concur:

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 Asaf Kletter
 Administrative Law Judge

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 Sheriene Anne Ridenour
 Administrative Law Judge

Date Issued: 8/22/2022