

2. On March 1, 2020, appellants paid by check \$5,213 for the 2019 tax year. FTB assessed an e-pay penalty of \$52.17, which appellants paid on March 15, 2020. This penalty is not at issue in this case.
3. On November 2, 2020, appellants paid by check \$100,000 for the 2020 tax year. FTB assessed an e-pay penalty of \$1,000.82, which appellants paid.
4. Appellants filed a claim for refund of the 2020 e-pay penalty, which FTB denied.
5. This timely appeal followed.

DISCUSSION

R&TC section 19011.5 requires certain individuals to submit their payments electronically, beginning on or after January 1, 2009, or be subject to a mandatory e-pay penalty. Electronic payments are required of individual taxpayers after they make an estimated tax or extension payment of more than \$20,000 on or after January 1, 2009, or after they file an original tax return with a tax liability over \$80,000 for any tax year beginning on or after that date. (R&TC, § 19011.5(a).) An individual who is required to pay electronically must continue to make all future payments electronically, unless the taxpayer either meets the requirements of section 19011.5(b) and makes an election to discontinue paying electronically, or the taxpayer requests and receives a waiver of the requirement pursuant to R&TC section 19011.5(d). R&TC section 19011.5(c) imposes a 1 percent e-pay penalty on a taxpayer who does not comply with the requirement to pay electronically unless the taxpayer shows that the failure to make the electronic payment was the result of reasonable cause and not willful neglect.

R&TC section 19011.5 does not state what circumstances establish “reasonable cause” or a lack of “willful neglect.” For guidance, OTA looks to case law interpreting this language for other penalties (e.g., the late-filing and late-payment penalties of R&TC sections 19131 and 19132, respectively). (*Appeal of Porreca*, 2018-OTA-095P.) To demonstrate reasonable cause in the context of late-filing penalties, a taxpayer must show that the failure to timely file a return occurred despite the exercise of ordinary business care and prudence. (*Ibid.*) The taxpayer bears the burden of proving reasonable cause for abating a penalty, and unsupported assertions are insufficient to satisfy a taxpayer’s burden of proof. (*Ibid.*) With respect to willful neglect, it has been interpreted to mean 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. (*Ibid.*)

Appellants do not contend that they filed an election under R&TC section 19011.5(b), or that they requested and received a waiver under R&TC section 19011.5(d). Rather, appellants request a refund of the e-pay penalty because this is the “first time [appellants] became aware of such a penalty.” However, ignorance of the law does not constitute reasonable cause for failure to comply with statutory requirements. (*Appeal of Porreca, supra.*) Even if it did, the record suggests that appellants knew of the requirement to pay their 2020 tax payment electronically, as FTB previously assessed, and appellants paid, an e-pay penalty for the 2019 tax year.


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

HOLDING

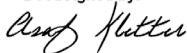
Appellants are liable for an e-pay penalty for the 2020 tax year.


DISPOSITION

FTB’s action denying appellants’ refund claim is sustained.

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Ovsep Akopchikyan
Administrative Law Judge

We concur:

DocuSigned by:

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Asaf Kletter
Administrative Law Judge

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Teresa A. Stanley
Administrative Law Judge

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