

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:
L. PAXTON

) OTA Case No. 21108752
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OPINION

Representing the Parties:

For Appellant: L. Paxton

For Respondent: Eric R. Brown, Tax Counsel III
Eric A. Yadao, Tax Counsel IV

K. GAST, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, L. Paxton (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund totaling \$2,001.37 for the 2019 and 2020 tax years.¹

Appellant elected to have this appeal determined pursuant to the procedures of the Small Case Program. Those procedures require the assignment of a single administrative law judge. (Cal. Code Regs., tit. 18, § 30209.1.)

Office of Tax Appeals Administrative Law Judge Kenneth Gast held an oral hearing for this matter in Cerritos, California, on August 17, 2022. At the conclusion of the hearing, the record was closed, and this matter was submitted for a decision.

ISSUE

Whether appellant has established reasonable cause to abate the mandatory electronic payment (e-pay or e-payment) penalty for the 2019 or 2020 tax year.

FACTUAL FINDINGS

1. For the 2017 tax year, appellant remitted an estimated tax payment to FTB that exceeded \$20,000, which triggered the requirement, under R&TC section 19011.5(a)(1), that she

¹ The total amount at issue is \$1,880.00 for 2019 and \$120.00 for 2020, plus interest of \$1.37.

- remit all subsequent payments electronically. On or about February 24, 2018, FTB sent appellant a notice informing her of this requirement.
2. Appellant mailed a 2019 tax year extension payment of \$200,000 by check that FTB received on July 15, 2020, the payment due date.
 3. Since the \$200,000 payment was not electronically remitted,² FTB sent appellant a State Income Tax Balance Due Notice that imposed, under R&TC section 19011.5(c), a 1 percent mandatory e-pay penalty of \$2,000 (i.e., \$200,000 x 1 percent), plus interest. Appellant paid this amount.
 4. Appellant then filed her 2019 California tax return, requesting that \$12,000 of her reported overpayment of tax be applied to her estimated taxes for the 2020 tax year. Of the \$200,000 payment by check, FTB allocated \$188,000 to 2019 and \$12,000 to 2020. FTB thus allocated the previously paid e-pay penalty of \$2,000 as follows: \$1,880 to 2019; and \$120 to 2020.
 5. Appellant filed a claim for refund, seeking abatement of the e-pay penalty based on reasonable cause grounds. FTB denied the claim, and this timely appeal followed.³

DISCUSSION

R&TC section 19011.5 requires certain individual taxpayers to remit their payments electronically for payments made on or after January 1, 2009. This mandatory e-pay requirement is triggered for all future payments after taxpayers make an estimated tax or extension payment that exceeds \$20,000 for any tax year beginning on or after January 1, 2009, or after they file an original tax return with a tax liability that exceeds \$80,000 for tax years beginning on or after that date.⁴ (R&TC, § 19011.5(a)(1)-(2).) Taxpayers required to electronically remit payment who make payment by other means must pay a penalty of 1 percent

² R&TC section 19011.5(f)(1) defines “electronically remit” as “to send payment through use of any of the electronic payment applications provided by [FTB], including, but not limited to, a pay by phone option, when made available by [FTB].”

³ Although appellant’s refund claim indicates it is only for the 2019 tax year, FTB treated the claim as both for the 2019 and 2020 tax years in its notice of action denying the claim.

⁴ E-payments for all future payments become mandatory unless taxpayers either meet the requirements of R&TC section 19011.5(b) and make an election to discontinue making payments electronically, or taxpayers request and receive a waiver of the e-pay requirement under R&TC section 19011.5(d). Appellant does not argue these election and waiver provisions are applicable.

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).)

Appellant does not dispute the imposition or calculation of the e-pay penalty and FTB has not alleged willful neglect; therefore, the only issue is whether there is reasonable cause to abate the penalty. To establish reasonable cause, a taxpayer bears the burden of proof to show 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.) The issue of whether a taxpayer has demonstrated reasonable cause for the 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 failure to make a timely payment of tax. (*Ibid.*)

Appellant contends she had sufficient funds to timely pay her 2019 taxes by the payment due date on July 15, 2020.⁵ But since the funds she wired into her bank account were not posted to that account until sometime after 1:00 p.m. on July 15, 2020, she believed, based on her professional experience with wiring money, if she attempted to wire those funds to FTB after 1:00 p.m. on that same day, they would have been sent the next day, which was a day too late. As a result, appellant mailed a \$200,000 check to FTB by July 15, 2020, to make sure she timely paid her taxes. She admits she “did not realize that on the FTB website [she] could [have] sen[t] the money owed up until midnight [on July 15, 2020].” However, appellant’s contention is unconvincing because it is well established that a taxpayer’s error attributable to an oversight is not reasonable cause. (See *Appeal of Friedman*, 2018-OTA-077P.)

Appellant also contends she did not electronically remit payment to FTB because her accountant waited until the afternoon of the payment due date to send her appropriate forms and wiring instructions. She asserts her accountant and his staff were overworked, understaffed due to personnel losses caused by the COVID-19 pandemic and the related loss of childcare caused by school closures, and unclear about how to interpret recently enacted tax laws. However, this does not explain why appellant did not make the required electronic payment after receiving wiring information from her accountant. Rather, as she admits above, her failure to do so is

⁵ Due to COVID-19, FTB postponed the deadline for timely 2019 tax return payments from April 15, 2020, to July 15, 2020. (See *State Postpones Tax Deadlines Until July 15 Due to the COVID-19 Pandemic*, March 18, 2020, available at: <https://www.ftb.ca.gov/about-ftb/newsroom/news-releases/2020-3-state-postpones-tax-deadlines-until-july-15-due-to-the-covid-19-pandemic.html>.)

attributable to her incorrect belief she could not electronically remit payment by midnight of the payment due date.⁶

In addition, although reasonable cause may exist if a taxpayer relies on a tax professional for substantive tax advice, such as whether a taxpayer is liable for taxes under the tax code or due to a debatable tax position, a taxpayer's reliance on a tax professional to timely file a tax return does not constitute reasonable cause because each taxpayer has a personal, nondelegable obligation to timely file such a return. (See *U.S. v. Boyle* (1985) 469 U.S. 241 [noting it requires no special training or effort to ascertain a deadline and make sure that it is met, and that a taxpayer's reliance on a tax professional cannot be a substitute for compliance with an unambiguous statute].) This well-settled rule is equally applicable to the mandatory e-pay penalty. (See *Appeal of Porreca*, *supra*.) Thus, appellant had a personal, nondelegable obligation to ensure that her payment complied with the requirements of R&TC section 19011.5(a).

HOLDING

Appellant has not established reasonable cause to abate the mandatory e-pay penalty for the 2019 or 2020 tax year.

DISPOSITION

FTB's action denying appellant's refund claim is sustained in full.

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Kenneth Gast
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Kenneth Gast
Administrative Law Judge

Date Issued: 9/2/2022

⁶ Appellant's contentions suggest she believes the mandatory e-pay penalty was imposed for her failure to electronically remit payment *and* for her failure to do so by the payment due date. However, the penalty was imposed *solely* for her failure to electronically remit the payment at issue, regardless of when that payment was due.