

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:

B. WONG AND
N. WONG

) OTA Case No. 21108773
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OPINION

Representing the Parties:

For Appellants:

B. Wong and N. Wong

For Respondent:

Ronald E. Hofsdal, Tax Counsel IV

T. LEUNG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, B. Wong and N. Wong (appellants) appeal an action by Franchise Tax Board (respondent), denying appellants’ claim for refund of a \$5,301 penalty, plus interest, for failing to pay their June 2021 estimated tax installment electronically.

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

ISSUE

Whether the mandatory electronic payment (e-pay) penalty should be abated.

FACTUAL FINDINGS

1. Appellants made a \$530,100 estimated tax payment in 2021 to respondent by check.
2. TurboTax (appellants’ tax preparation software) did not advise appellants that they were required to remit their tax payments electronically.
3. Appellants have been subject to mandatory e-pay since 2011. When appellants failed to pay electronically in 2012, the e-pay penalty was imposed, which respondent waived as part of its education and compliance program.

DISCUSSION

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).¹ 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 state 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 basis 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.*)

Reliance on tax preparation software and ignorance of the law do not constitute reasonable cause for failure to comply with statutory requirements. (*Appeal of Porreca, supra.*) Taxpayers do not exercise ordinary business care and prudence when they fail to acquaint themselves 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. (*U.S. v. Boyle* (1985) 469 U.S. 241, 245.)

Moreover, appellants were already subject to mandatory e-pay for many years prior to the 2021 \$530,100 payment, so it can hardly be said that they were unaware of their e-pay

¹ Appellants did not make this election or request this waiver.

obligation. In addition, the law does not permit abatement of the mandatory e-pay penalty for individuals with a good filing history.

HOLDING

The mandatory e-pay penalty shall not be abated.

DISPOSITION

Respondent’s action is sustained.

DocuSigned by:
Tommy Leung
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Tommy Leung
Administrative Law Judge

We concur:

DocuSigned by:
Andrea L.H. Long
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Andrea L.H. Long
Administrative Law Judge

DocuSigned by:
Andrew Kwee
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Andrew Kwee
Administrative Law Judge

Date Issued: 12/14/2022