

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:
R. THOMPSON

) OTA Case No. 220510355
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OPINION

Representing the Parties:

For Appellant:

R. Thompson

For Respondent:

Alisa L. Pinarbasi, Tax Counsel

For Office of Tax Appeals:

Andrew Delvasto, Graduate Student
Assistant

K. LONG, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, R. Thompson (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$629.26 for the 2021 tax year.

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.) Appellant waived the right to an oral hearing; therefore, the matter is being decided based on the written record.

ISSUE

Whether appellant has met the burden of proof to establish reasonable cause to abate the mandatory electronic payment penalty for the 2021 tax year.

FACTUAL FINDINGS

1. On January 10, 2022, appellant remitted a 4th quarter estimated tax payment of \$62,900 by personal check for tax year 2021.

2. On January 26, 2022, FTB issued a State Income Tax Balance Due Notice notifying appellant that FTB imposed a mandatory one-percent penalty plus applicable interest (or \$629.26) for failure to electronically remit the 4th quarter estimated tax payment.
3. On January 31, 2022, appellant paid in full the mandatory electronic payment penalty, plus interest.
4. On February 2, 2022, appellant filed a claim for refund requesting FTB abate the electronic payment penalty because appellant was unaware of any requirement to make the tax payment electronically.
5. On March 9, 2022, FTB denied appellant's claim for refund stating that appellant did not demonstrate reasonable cause to abate the e-payment penalty.
6. Appellant timely filed this appeal.

DISCUSSION

A taxpayer must electronically remit payments to FTB if the taxpayer has made an estimated tax payment in excess of \$20,000 or the taxpayer's total tax liability exceeds \$80,000 for any tax year. (R&TC, § 19011.5(a).) Any taxpayer required to electronically remit payment who makes payment by any other means must pay a penalty equivalent to one percent of the amount paid, unless it is shown that the failure to make an electronic payment was for reasonable cause and was not due to willful neglect. (R&TC, § 19011.5(c).) FTB does not contend appellant showed willful neglect; thus appellant need only prove reasonable cause to abate the electronic payment penalty.

When FTB imposes a penalty, the law presumes that the penalty was imposed correctly. (*Appeal of Xie*, 2018-OTA-076P.) To establish reasonable cause to abate the mandatory electronic payment penalty, a taxpayer has the burden of proving the failure to electronically remit a required payment occurred despite the exercise of ordinary business care and prudence. (*Appeal of Porreca*, 2018-OTA-095P.) Generally, a taxpayer's error due to an oversight is not reasonable cause to abate a penalty. (See *Appeal of Friedman*, 2018-OTA-077P.) Further, a taxpayer who fails to acquaint themselves with the requirements of California tax law does not exercise ordinary care and prudence. (*Appeal of Porreca*, *supra*.) Unsupported assertions are insufficient to satisfy a taxpayer's burden of proof. (*Ibid.*)

Here, appellant's 4th quarter estimated payment of \$62,900 to the FTB on January 10, 2022, exceeded the \$20,000 threshold for mandatory electronic remittance. As a

result of appellant’s payment by personal check, FTB accordingly imposed a one-percent penalty, plus applicable interest, of \$629.26.

Appellant argues he had reasonable cause to not electronically remit the estimated tax payment because he “had no reason to believe an online payment was required to be used to make this payment” when following FTB’s written instructions. However, while appellant “did not notice this statement at the time” of payment, appellant concedes he handled the Form 540-ES stub featuring the written instructions when he mailed the stub to FTB along with his check. Appellant’s error is due to an oversight in failing to read the applicable caution on the Form 540-ES to review the written instructions.¹ Appellant’s failure to acquaint himself with the requirements of California tax law demonstrated a lack of ordinary care and prudence. (*Appeal of Porreca, supra.*) Thus, appellant’s failure to make the electronic payment was not for reasonable cause.


Therefore, appellant has not established reasonable cause necessary to abate the mandatory electronic payment penalty.

HOLDING

Appellant has not met their burden of proof to establish reasonable cause to abate the mandatory electronic payment penalty.

DISPOSITION

FTB’s action is sustained.

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Keith T. Long
Administrative Law Judge

Date Issued: 12/5/2022

¹ Appellant asserts FTB incorrectly characterizes appellant’s argument as that his failure to electronically remit his estimated tax payment resulted from his reliance on his tax preparer’s advice. Such reliance would not excuse appellant’s “fail[ure] to acquaint himself with the requirements of California tax law.” (*Appeal of Porreca, supra*; see *U.S. v. Boyle* (1985) 496 U.S. 241 [noting a taxpayer’s failure to timely file a return is not excused by a taxpayer’s reliance on an agent because such reliance is not reasonable cause].)