

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 220811237
)
S. RIDGE AND)
S. RIDGE)
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OPINION

Representing the Parties:

For Appellants: S. Ridge

For Respondent: Josh Ricafort, Tax Counsel
Eric Yadao, Tax Counsel IV

For Office of Tax Appeals: Rachel Lee, Graduate Student Assistant

O. AKOPCHIKYAN, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, S. Ridge (appellant-husband) and S. Ridge (together, appellants) appeal an action by respondent Franchise Tax Board (FTB) denying appellants' claim for refund of \$950.47 for the 2021 tax year.

Appellants 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 (OTA) Administrative Law Judge Ovsep Akopchikyan held an electronic oral hearing for this appeal on May 18, 2023. At the conclusion of the hearing, the record was closed and this matter was submitted for an opinion.

ISSUE

Whether appellants have established reasonable cause to abate the mandatory electronic payment (e-pay) penalty for the 2021 tax year.

FACTUAL FINDINGS

1. On June 14, 2015, FTB issued a Mandatory Electronic Payment notice to appellants, informing them about the mandatory e-pay requirement for all future payments.

2. On June 29, 2020, FTB issued a State Income Tax Balance Due Notice imposing a \$50.05 mandatory e-pay penalty for a \$5,000.00 estimated tax payment for the 2020 tax year that appellants paid by check. The notice advised appellants of their obligation to submit all payments electronically. Appellants paid this e-pay penalty on or about July 7, 2020.
3. On September 10, 2021, appellants paid an estimated tax payment of \$95,000.00 by check for the 2021 tax year.
4. On September 20, 2021, FTB issued a State Income Tax Due Notice notifying appellants that FTB imposed an e-pay penalty of \$950.47 for this payment.
5. Appellants paid this e-pay penalty in full, the only penalty at issue in this appeal, and filed a refund claim requesting abatement of the penalty based on reasonable cause.
6. FTB denied the refund claim and this timely appeal followed.

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 beginning on or after January 1, 2009. (R&TC, § 19011.5(a)(1)-(2).) An individual who is required to pay electronically 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 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 penalty equivalent to one percent of the amount paid by a taxpayer who does not comply with the requirement to pay electronically, unless the taxpayer shows that the failure to make an electronic payment was the result of reasonable cause and not willful neglect. (R&TC, § 19011.5(c).)

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 e-pay 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.) Ignorance of the law is not reasonable cause for the failure to

comply with the mandatory e-pay requirements. (*Ibid.*) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Ibid.*)

Here, 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 based on their position that they were not aware of the mandatory e-pay requirements. However, on June 14, 2015, FTB issued a Mandatory Electronic Payment notice, which informed appellants of the mandatory e-pay requirement for all future payments. Additionally, on June 29, 2020, when appellants made their estimated tax payment of \$5,000.00 for the 2020 tax year by check, FTB issued a State Income Tax Balance Due Notice imposing an e-pay penalty of \$50.05 and informing appellants of their duty to electronically remit tax payments. Therefore, OTA finds that appellants were on notice of their duty to make electronic payments.

Appellants also argue that their e-pay penalty should be abated because the entire \$95,000 estimated tax payment at issue resulted in an overpayment of tax and refund. However, pursuant to R&TC section 19011.5, appellants are required to make all payments electronically, regardless of whether a payment later amounts to an overpayment.

HOLDING

Appellants have not established reasonable cause to abate the mandatory e-pay penalty for the 2021 tax year.

DISPOSITION

FTB's action in denying appellants' claim for refund is sustained.

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Ovsep Akopchikyan
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Ovsep Akopchikyan
Administrative Law Judge

Date Issued: 8/21/2023