

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
R. O’HARE) OTA Case No. 220911341
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OPINION

Representing the Parties:

For Appellant: Ingrid Yu, TAAP Representative¹

For Respondent: Paige Chang, Attorney
Maria Brosterhous, Attorney

For Office of Tax Appeals: Nguyen Dang, Attorney

N. RALSTON, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, R. O’Hare (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant’s claim for refund of \$4,607.08 for the 2021 tax year.²

Office of Tax Appeals (OTA) Administrative Law Judges Lauren Katagihara, Michael F. Geary, and Natasha Ralston held an oral hearing for this matter electronically on October 20, 2023. At the conclusion of the hearing, the record was closed and this matter was submitted for an opinion.

ISSUE

Whether appellant has established reasonable cause for failing to make an electronic payment (e-pay or e-payment) of his tax liability.

¹ TAAP stands for Tax Appeals Assistance Program (TAAP). Ingrid Yu of TAAP represented appellant at the hearing. Janet Lim of TAAP filed appellant’s reply brief.

² The amount listed in respondent’s refund claim denial is \$4,607.08, which is slightly higher than the \$4,605.00 requested on appellant’s refund claim. Presumably, the former reflects the refund amount that respondent determined appellant would receive if he prevailed on his refund claim. Respondent’s denial also mistakenly referred to the 2020 tax year, but it is undisputed that the tax year at issue in this appeal is 2021.

FACTUAL FINDINGS

1. It is undisputed that for the 2021 tax year, appellant was required to make all required payments electronically and that failure to do so would result in the imposition of an e-pay penalty. Furthermore, it is undisputed that appellant was aware that he was required to pay electronically.
2. Appellant's tax payment for the 2021 tax year was due on April 18, 2022.
3. Appellant made an extension payment via check dated April 7, 2022 (Check).
4. On April 11, 2022, prior to the payment due date, appellant and his spouse separately contacted respondent to inquire as to whether appellant could submit an electronic payment and cancel the Check in order to avoid imposition of the e-pay penalty.
5. On that date, respondent advised appellant's spouse not to cancel the Check as it would result in the imposition of both a dishonored payment penalty and e-pay penalty (because allowing the Check to be processed would result in only the e-pay penalty). Respondent further advised appellant to file a request for waiver of the mandatory electronic payment requirement (waiver request) and that respondent would consider the request.
6. Respondent's records reflect appellant's Check was posted to his account for the 2021 tax year with an effective date of April 11, 2022. Appellant's bank records reflect the Check cleared appellant's bank account on April 12, 2022.
7. Respondent received appellant's waiver request on April 15, 2022.³
8. On April 20, 2022, appellant paid the e-pay penalty.⁴
9. Subsequently, appellant filed a timely refund claim requesting a refund of the e-pay penalty.
10. Respondent denied appellant's refund claim and this timely appeal followed.

DISCUSSION

R&TC section 19011.5(a) states that all payments required by individuals under Part 10.2 of Division 2 of the R&TC, regardless of the taxable year to which the payments apply, made on or after January 1, 2009, shall be electronically remitted to respondent once individuals meets

³ The waiver request notes that a separate form, Form 2917, is used to request abatement of a previously imposed penalty.

⁴ When respondent issued its State Income Tax Balance Due Notice imposing the e-pay penalty on April 25, 2022, respondent used appellant's account balance summary as of April 19, 2022.

either of the following two conditions for any taxable year beginning on or after January 1, 2009: (1) their estimated tax payment or extension payment exceeds \$20,000; or (2) their total tax liability exceeds \$80,000. (R&TC, § 19011.5(a)(1)-(2).) Taxpayers who are subject to the electronic payment requirement but fail to remit their required payments electronically are subject to an e-pay penalty, unless their failure to make the payment electronically was for reasonable cause and not the result of willful neglect. (R&TC, § 19011.5(a), (c).) To establish reasonable cause for abating the e-pay penalty, the taxpayer must prove that their failure to comply with the requirements of the law occurred despite the exercise of ordinary business care and prudence. (*Appeal of Porreca*, 2018-OTA-095P.)

Appellant does not dispute that he is subject to the e-pay requirement for the tax year at issue and failed to comply. Appellant testified at the hearing that he had concerns about making a substantial e-payment because his tax preparer had told him that respondent had withdrawn duplicate payments from one of the tax preparer's client's account. However, appellant's concerns about respondent's website security and the risk of a duplicate withdrawal do not constitute reasonable cause and are not justifications for disregarding appellant's obligations under the law. (See *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].) Furthermore, appellant's filing of a waiver request similarly does not warrant a finding of reasonable cause. The waiver request specifically indicates that taxpayers must continue to e-pay until respondent notifies the taxpayer that the waiver request was approved. Although appellant attempted to have the waiver request approved prior to the processing of the Check, the Check was deposited by respondent and posted to appellant's bank account no later than April 12, 2022, but respondent did not receive appellant's waiver request until three days later, on April 15, 2022. Therefore, the waiver request, even if approved, would not have been a basis to abate the imposition of the e-pay penalty associated with the Check.

After appellant's tax preparer confirmed that appellant was subject to the e-pay requirement, appellant and his spouse attempted to contact respondent via both telephone and respondent's online message portal. At the hearing, appellant's spouse testified that she spoke with respondent's representative on April 11, 2022, which was approximately a week before the tax payment was due and was informed that the Check had not been processed or cashed. Further, appellant testified that respondent's online portal did not show that the Check had been

posted to his account. Appellant asserts that he and his wife conveyed this information to respondent and offered to place a stop payment on the Check and make the payment electronically but were advised by respondent that cancelling the Check would result in the imposition of a dishonored payment penalty. Appellant's spouse testified that respondent informed her that respondent's e-pay system and check payment system do not "talk to each other" or sync and therefore, appellant's only course of action would be to file a waiver request. Appellant was aware that the waiver request would not be applied retroactively but believed that it could apply to the Check because it had not yet been cashed or processed. Appellant's spouse further testified that respondent advised her that even if appellant submitted an e-payment on April 11, 2022, appellant would still be subject to the e-pay penalty (in addition to the dishonored payment penalty).

However, appellant's attempt to rectify his initial disregard of the law is also not a basis for relief of the penalty. (See *Appeal of Porreca, supra.*) Appellant was aware of his noncompliance with the law when he mailed the Check. Thus, appellant's unfortunate situation was therefore of his own making and appellant's inability to have the Check rescinded or his belief that the e-pay requirement would be waived does not excuse his initial lapse in judgment. Consequently, appellant did not exercise ordinary business care and prudence.

HOLDING

Appellant has not established that he had reasonable cause for failing to make an e-payment of his tax liability.

DISPOSITION

Respondent’s action is sustained.

DocuSigned by:
Natasha Ralston
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Natasha Ralston
Administrative Law Judge

We concur:

DocuSigned by:
Michael Geary
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Michael F. Geary
Administrative Law Judge

DocuSigned by:
Lauren Katagihara
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Lauren Katagihara
Administrative Law Judge

Date Issued: 1/16/2024