

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:)
V. TONG¹) OTA Case No. 230212673
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OPINION

Representing the Parties:

For Appellant: Jill Mikolajczak, CPA

For Respondent: David Muradyan, Attorney

For Office of Tax Appeals: Sean Erdman, Graduate Student Assistant

J. LAMBERT, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, V. Tong (appellant) appeals an action by respondent Franchise Tax Board (FTB) denying appellant’s claim for refund of \$5,059.94² for the 2022 tax year.

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

ISSUE

Whether appellant has shown a basis to abate the mandatory electronic payment (e-pay) penalty.

¹ There is a second individual, E. Tong, listed on the appeal form and claim for refund form, but FTB’s State Income Tax Balance Due Notice and claim denial letter only lists V. Tong.

² The amount at issue is comprised of a \$5,000 mandatory electronic payment penalty and interest paid in the amount of \$59.94. Appellant does not provide separate arguments on appeal relating to interest. Thus, while interest may be adjusted should appellant prevail on the mandatory electronic payment penalty issue, interest will not be addressed as a standalone issue in this Opinion.

FACTUAL FINDINGS

1. Appellant was required to submit payments to FTB electronically starting on June 9, 2012.
2. On April 18, 2022, appellant remitted an estimated tax payment of \$500,000 for the 2022 tax year by check sent to FTB via mail.
3. FTB issued a State Income Tax Balance Due Notice to appellant, imposing an e-pay penalty of \$5,000, which appellant paid thereafter.
4. Appellant filed a claim for refund with FTB for the e-pay penalty, which FTB denied.
5. Appellant filed this timely appeal.

DISCUSSION

R&TC section 19011.5(a) requires certain individuals to remit all future payments electronically if they make an estimated tax or extension payment in excess of \$20,000 beginning on or after January 1, 2009, or if they file an original return with a tax liability over \$80,000 for a taxable year beginning on or after January 1, 2009. Individuals who have become subject to the e-pay requirement must continue to make all future payments electronically, unless the taxpayers either meet the requirements of R&TC section 19011.5(b) and makes an election to discontinue e-pay, or the taxpayers request and receive a waiver of the e-pay requirement pursuant to R&TC section 19011.5(d).³ (*Appeal of Porreca*, 2018-OTA-095P.) R&TC section 19011.5(c) provides that individuals who do not comply with the e-pay requirement shall pay a penalty of one percent of the amount paid, unless it is shown that the failure to make the payment as required was due to reasonable cause and was not the result of willful neglect.

Although R&TC section 19011.5 does not define “reasonable cause” or a lack of “willful neglect,” 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. (*Appeal of Porreca*, *supra*.) To establish reasonable cause for the failure to comply with the e-pay requirement, a

³ R&TC section 19011.5(b) provides that taxpayers who are required to electronically remit payments to FTB may elect to discontinue making payments electronically when the threshold requirements set forth in R&TC section 19011.5(a)(1) and (2) were not met in the preceding taxable year. The election must be made in the form and manner prescribed by FTB. (R&TC, § 19011.5(b).) R&TC section 19011.5(d) provides that taxpayers required to electronically remit payments may request a waiver of those requirements from FTB. Appellant did not make this election or request this waiver.

taxpayer must show that the failure to comply occurred despite the exercise of ordinary business care and prudence, or that cause existed as would prompt an ordinarily intelligent and prudent businessman to have so acted under similar circumstances. (*Ibid.*; see also *Appeal of Head and Feliciano*, 2020-OTA-127P.)

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 for the failure to electronically remit the payment as required. Appellant contends that when he was finalizing his 2022 extension payment, he was traveling and did not have the ability to remit the tax payment online due to a lack of internet connectivity. He further contends that he remitted the extension payment on time by mailing the payment since there were no other options. Appellant states that he has always made the estimated tax payments online as required by tax law, but asserts that in this situation, he was not able to because he was traveling and had internet connectivity issues.

Appellant has not met his burden of proof to establish reasonable cause. Appellant does not provide any evidence showing that he was unable to remit the payment online while traveling or that he took steps to pay electronically but was unable to do so despite the exercise of ordinary business care and prudence. Furthermore, appellant had the ability to schedule a payment ahead of time if he knew that he was traveling to an area with no internet connection.⁴ For such reasons, appellant has not established reasonable cause for the failure to electronically remit the payment.

⁴ <https://www.ftb.ca.gov/pay/bank-account/index.asp>

HOLDING

Appellant has not shown a basis to abate the e-pay penalty.

DISPOSITION

FTB’s action is sustained.

DocuSigned by:
Josh Lambert
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Josh Lambert
Administrative Law Judge

We concur:

DocuSigned by:
John O Johnson
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John O. Johnson
Administrative Law Judge

DocuSigned by:
Josh Aldrich
48745BB806914B4...

Josh Aldrich
Administrative Law Judge

Date Issued: 3/18/2024