

In the Matter of the Appeal of:) OTA Case No. 230814190
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V. TO)
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1. Appellant filed her 2021 California personal income tax return showing a tax liability of \$89,332.
2. Subsequently, appellant remitted a \$50,000 check to respondent for payment of her 2022 estimated taxes, including the bottom (voucher) of respondent's Form 540 ES.
3. Because appellant did not remit her \$50,000 payment electronically, respondent imposed the one percent mandatory e-pay penalty of \$500, which appellant paid.
4. Appellant subsequently filed a refund claim for the \$500 e-pay penalty, which respondent denied.

DISCUSSION

Electronic 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 one 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 bases 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.

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. (*Ibid*; see *U.S. v. Boyle* (1985) 469 U.S. 241, 245.)

Appellant does not dispute that she was required to make tax payments electronically. Instead, appellant claims that she did not receive respondent’s May 2022 notice regarding her

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

obligation to make future tax payments electronically. However, as noted above, taxpayers are required to be cognizant of California's tax laws. Moreover, contained on the Form 540 ES voucher submitted by appellant with her \$50,000 payment is language advising taxpayers about California's e-pay requirement.

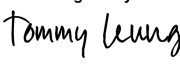
At appeal, appellant contends that she qualifies for one-time penalty abatement. (See R&TC, § 19132.5.) However, the one-time penalty abatement law is only applicable to "timeliness" penalties, which is defined as the late-filing or late-payment penalties imposed by R&TC sections 19131 and 19132, respectively. (See R&TC, § 19132.5(c).) Because the mandatory e-pay penalty is not a "timeliness" penalty, appellant is not eligible for one-time abatement.

HOLDING

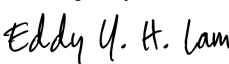
Appellant is not entitled to abatement of the e-pay penalty.

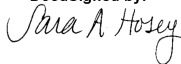
DISPOSITION

Respondent's action is sustained.

DocuSigned by:

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Tommy Leung
Administrative Law Judge

We concur:

DocuSigned by:

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Eddy Y.H. Lam
Administrative Law Judge

DocuSigned by:

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Sara A. Hosey
Administrative Law Judge

Date Issued: 12/19/2024