

FACTUAL FINDINGS

1. On April 5, 2021, FTB notified appellants that they met FTB's mandatory e-pay requirement, and that appellants must electronically pay all future payments or be subjected to a penalty of 1 percent of the amount paid.¹
2. On October 15, 2023, appellants made a payment by check towards their 2022 tax year account in the amount of \$414,815.
3. On October 25, 2023, FTB notified appellants that, because appellants had not made the payment electronically, it imposed the e-pay penalty in the amount of \$4,148.15 plus interest.
4. Appellants paid the e-pay penalty and submitted a claim for refund in that amount. FTB denied appellants' claim for refund.
5. In its claim denial notice, FTB indicated that it was providing two forms to appellants: Form 1084, Personal Income Tax Denial of Claim for a Refund Information, and Form 1037, Request for Appeal Before the Office of Tax Appeals. In its opening brief, FTB states that it appears that FTB inadvertently omitted these forms from the correspondence.
6. Appellants then filed this timely appeal.

DISCUSSION

R&TC section 19011.5 requires certain individual taxpayers to remit electronically all payments made on or after January 1, 2009, regardless of the tax year to which the payments apply. This mandatory e-pay requirement is triggered for all future payments after an individual make any installment payment of estimated tax or extension payment that exceeds \$20,000 for any tax year beginning on or after January 1, 2009, or the total tax liability shown on the original return exceeds \$80,000 for any tax year beginning on or after that date.² (R&TC, § 19011.5(a)(1)-(2).) Taxpayers required to electronically remit payment who make payment by other means must pay a penalty of one percent of the amount paid, unless it is shown that the

¹ On April 15, 2021, appellants submitted a request for waiver of the mandatory e-pay requirement. On June 16, 2021, FTB notified appellants that their request for waiver has been denied because appellants' tax year 2020 liability was over \$80,000.

² Electronic payments for future payments become mandatory unless the taxpayer either meets the requirements of R&TC section 19011.5(b) and makes an election to discontinue making payments electronically, or the taxpayer requests and receives a waiver of the e-pay requirements under R&TC section 19011.5(d). Appellants do not argue that these election and waiver provisions are applicable.

failure to make an electronic payment was for reasonable cause and was not the result of willful neglect. (R&TC, § 19011.5(c).)

Appellants do not dispute that the e-pay penalty was properly imposed and calculated, and FTB does not allege that appellants' failure to make an electronic payment was due to willful neglect. The only issue therefore is whether there was reasonable cause for the failure to make an electronic payment. To establish reasonable cause, a taxpayer has the burden of proving that the failure to electronically remit a required payment occurred despite the exercise of ordinary business care and prudence. (*Appeal of Porreca*, 2018-OTA-095P.) The issue of whether a taxpayer has demonstrated reasonable cause for the e-pay penalty asks the same questions and weighs the same evidence as the issue of whether reasonable cause exists for the failure to timely file a tax return or the failure to make a timely payment of tax. It is appropriate to look to cases that discuss those penalties for guidance. (*Ibid.*)

Here, appellants argue that the penalty should be abated because their failure to pay electronically was due to reasonable cause. Appellants share some of the difficulties they faced during 2023 in support of their reasonable cause argument. OTA recognizes that appellants dealt with very serious challenges during that time and that they made significant efforts to ensure the timely payment of their tax liability. To abate the e-pay penalty, however, appellants must demonstrate reasonable cause for the failure to *electronically pay* their tax payment. While clearly diligent in their intention to timely pay their tax liability, appellants have not shown how their circumstances prevented them from making the payment electronically. Appellants admit that amid these difficulties, they forgot that they were required to pay their tax electronically. However, failure to comply with statutory requirements due to an oversight by the taxpayer does not constitute reasonable cause. (*Appeal of Quality Tax & Financial Services, Inc.*, 2018-OTA-130P.)

Appellants contend that payment by check is more secure than online payment. Regardless of the validity of appellants' security concerns, the law requires electronic payment in this situation. Appellants also state that FTB should not "accept, endorse and deposit" a check if payment is required to be made electronically. Appellants appear to allude to the laws governing accord and satisfaction. But the law is clear that "the simple acceptance and cashing of a check tendered by a taxpayer does not represent an accord and satisfaction, or any similar final determination binding upon the government as the recipient of the funds." (*Kehew v. Commissioner*, T.C. Memo. 1983-354, citing *Botany Worsted Mills v. U.S.* (1929) 278 U.S. 282; *Moskowitz v. U.S.* (Ct. Cl. 1961) 285 F.2d 451, 453; *Parks v. Commissioner* (1959) 33 T.C. 298, 302; *Johnston v. Commissioner* (1930) 19 B.T.A. 630, 632–633.) Moreover, there is no dispute

in this appeal as to whether FTB accepted appellants' payment by check as satisfaction of the tax liability. At issue in this appeal is whether the e-pay penalty may be abated.

Appellants contend that another ground for abatement of the e-pay penalty is that FTB did not attach FTB Form 1084, Personal Income Tax Denial of Claim for a Refund Information, and FTB Form 1037, Request for Appeal Before the Office of Tax Appeals, to the refund claim denial notice that it issued to appellants. Appellants do not provide, and OTA cannot find any law requiring that FTB mail these forms to taxpayers. Appellants also point to their tax compliance history as another reason for abatement of the penalty. However, California's one-time abatement program does not apply to the e-pay penalty. (R&TC, § 19132.5(a)(1) & (c).)

While OTA is sympathetic to appellants' situation, the legal precedent on this issue compels OTA to conclude that appellants have not established reasonable cause to abate the e-pay penalty.

HOLDING

Appellants have not established reasonable cause to abate the e-pay penalty for tax year 2022.

DISPOSITION

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

DocuSigned by:
Amanda Vassigh
7B17E958B7C14AC...
Amanda Vassigh
Administrative Law Judge

Date Issued: 3/10/2025