

In the Matter of the Appeal of:

J. WICKLUND AND

A. TAM

) OTA Case No. 230813998
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¹ Appellants filed their own opening brief. Their reply brief was filed by TAAP student representative Na Yeon Kim, and their additional reply brief was filed by TAAP student representative Sophia Mejia.

FACTUAL FINDINGS

1. Appellants filed their joint California Resident Income Tax Return (the return) on April 15, 2022.
2. Respondent's e-payment (e-pay) website requires a taxpayer who wants respondent to debit their checking account to input their bank routing number and checking account number.²
3. On April 13, 2022, appellants attempted to schedule an April 15, 2022 e-pay of the amount reported as due. Appellants input a checking account number and a routing number that ended in 1627. The attempted e-pay failed.
4. On or about April 28, 2022, respondent issued a Mandatory E-Pay Notice to appellants.³ This Notice states, in part: "You recently made an estimated tax of extension payment for more than \$20,000 or filed a tax return with a total tax liability of over \$80,000 and now meet our mandatory . . . e-pay requirement."
5. On June 22, 2022, respondent issued to appellants a State Income Tax Balance Due Notice, which indicated that the April 15, 2022 e-pay had not been successful and that the following additional amounts were also due: a \$355 underpayment of estimated tax penalty, a \$1,968.14 late-payment penalty, and applicable interest.
6. Appellants successfully paid the full amount due by e-pay on July 6, 2022. On this occasion, appellants input the same checking account number that they had used for the failed attempt and a routing number ending in 0760. This e-pay was successful.
7. Appellants filed a claim for refund dated August 18, 2022. The claim sought refund of \$2,313.14, which respondent interpreted as a claim for refund of \$2,323.14, the total of the two penalties.
8. On May 10, 2023, respondent denied the claim.
9. In their reply brief, appellants agreed to limit their appeal to the late-payment penalty.
10. At the hearing, J. Wicklund testified to the following:
 - He has not had checks or used checks for a very long time and has used respondent's e-pay system since 2015.

² Individual taxpayers also have the option of using a credit card, for a fee, or "electronic funds withdrawal," which requires special software or the services of a tax professional.

³ The date of the notice is illegible, and appellants have variously stated that the document was sent to them on April 22, 2022, or April 28, 2022, and that they received the document about two weeks after the attempted payment.

- He does not know the routing number for his checking account and does a Google search for “Chase Bank routing number” when he needs it.
- When he received respondent’s Mandatory E-Pay Notice about two weeks after the attempted payment, he assumed this was confirmation that the payment had been successful.

DISCUSSION

Generally, the date prescribed for the payment of tax is the due date of the return without regard to extensions of the time for filing the return. (R&TC, § 19001.) In appellants’ case, the payment was due on April 15, 2022. (R&TC, § 18566.) R&TC section 19132 imposes a late-payment penalty when a taxpayer fails to pay the amount shown as due on the return by the date prescribed for the payment of the tax unless the taxpayer shows that the failure was due to reasonable cause and not due to willful neglect. When respondent imposes a penalty, the law presumes that the penalty was imposed correctly. (*Appeal of Xie*, 2018-OTA-076P.)

The late-payment penalty is the sum of two figures that may not exceed 25 percent of the unpaid tax. (R&TC, § 19132(a)(2).) The first addend is five percent of the tax that remained unpaid as of the due date. (R&TC, § 19132(a)(2)(A).) The second addend is 0.5 percent of the unpaid tax balance per month for each month, or portion of a month, that the tax remains unpaid after the due date, not to exceed 40 months. (R&TC, § 19132(a)(2)(B).) The amount of the penalty is not in dispute.

To establish reasonable cause for a late payment of tax, a taxpayer must show that the failure to make a timely payment occurred despite the exercise of ordinary business care and prudence. (R&TC, § 19132(a)(1); *Appeal of Rougeau*, 2021-OTA-335P.) Ordinary business care and prudence includes taking reasonable steps to verify that an e-pay has been successful. (*Appeal of Friedman*, 2018-OTA-077P.) The taxpayer bears the burden of proving that an ordinarily intelligent and prudent businessperson would have acted similarly under the circumstances. (*Appeal of Triple Crown Baseball LLC*, 2019-OTA-025P.) This is an objective standard,⁴ meaning that the taxpayer’s sincere belief that they are following the law is not determinative. (*Appeal of Cremel and Koeppel*, 2021-OTA-222P.) Unsupported assertions are insufficient to satisfy a taxpayer’s burden of proof. (*Appeal of Porreca*, 2018-OTA-095P.)

Appellants argue that they exercised ordinary business care and prudence when they entered their information into respondent’s e-pay system. They assert there was nothing to alert

⁴ See *U.S. v. Boyle* (1985) 469 U.S. 241, 248 n. 6, cited with approval in *Conklin Bros. of Santa Rosa, Inc. v. U.S.* (9th Cir. 1993) 986 F.2d 315, 318.

them to the fact that the payment would not or did not go through until they received the June 22, 2022 State Income Tax Balance Due Notice. Appellants also argue that they were misled by respondent's Mandatory E-Pay Notice, which they relied upon as confirmation that the payment had been successful. Finally, appellants point to their payment of the liability soon after receipt of the State Income Tax Balance Due Notice, apparently as evidence of their good faith and usual practice of paying taxes promptly.⁵

OTA is not persuaded that appellants exercised ordinary business care and prudence when they relied on a Google search to find their routing number. Appellants' evidence that purports to represent the search that appellants conducted to find their routing number shows routing numbers for wire transfers. The credible evidence indicates that the routing number associated with appellants' checking account was not the one they used for the unsuccessful payment. There is no evidence in the record to show that a routing number used for wire transfers can be used on respondent's e-pay site with a checking account number to authorize respondent to debit the checking account. OTA finds that appellants failed to exercise ordinary business care and prudence when they entered the routing number ending in 1627 to authorize respondent to debit their checking account.

Regardless of the reason why the payment was unsuccessful, appellants did not exercise ordinary business care and prudence when they failed to monitor their account to ensure the timely transfer of funds. (*Appeal of Friedman, supra*; *Appeal of Scanlon*, 2018-OTA-075P.) While respondent provides all taxpayers with e-pay options – a requirement for some taxpayers – the taxpayer controls the process and assumes the risk of input error. The e-payment site warns taxpayers to verify the accuracy of the information that respondent needs to charge a taxpayer's credit card or debit a taxpayer's checking account. But taking care in that regard is not enough because ordinary business care and prudence also requires that a taxpayer take steps to ensure that e-pays are successful. (*Appeal of Scanlon*, 2018-OTA-075P.)

OTA rejects appellants' argument that they were misled by the language of the Mandatory E-Pay Notice. The first sentence of this document states, "You recently made an estimated tax or extension payment for more than \$20,000 or filed a tax return with a total tax liability of over \$80,000 and now meet our mandatory . . . e-pay requirement." The attempted payment was not an estimated tax or extension payment. The failed payment was for the

⁵ No one questions appellants' good faith or their commitment to comply with the tax laws. To the extent appellants seek what is sometimes referred to as first-time penalty abatement, while the IRS has had such a program for years, California only recently enacted R&TC, § 19132.5, which allows first-time penalty abatement beginning with the 2022 tax year. (See R&TC, § 19132.5(f).)

amount reported as due on the return that was filed on the April 15, 2022 due date. It appears that the document was issued to appellants because they filed a return with a total tax liability of over \$80,000. OTA finds that appellants did not exercise ordinary business care and prudence when they assumed that the Mandatory E-Pay Notice confirmed that the payment had been successful.

Furthermore, as this Opinion has already explained, ordinary business care and prudence required appellants to monitor their checking account in the days and weeks following the attempted payment. That duty would attach shortly after appellants attempted to authorize the payment and would continue until the payment was confirmed. Even if the Mandatory E-Pay Notice could have been interpreted as a payment confirmation by a person exercising ordinary business care and prudence, it would not negate the legal effect of a failure to monitor that occurred before appellants received the document. When a taxpayer attempts to authorize respondent to debit their account for an amount due, and that taxpayer authorizes that debit on the due date, there is no room for error; and it becomes the taxpayer's responsibility to monitor the checking account. It takes time for a payment to be completed after a debit is initiated. Realistically, when a taxpayer authorizes a debit on the due date, it is highly unlikely that the payment can be verified sooner than three to five days after the due date. Someone who is exercising ordinary business care and prudence would ensure the payment was successful.

HOLDING

Appellants are not entitled to abatement and refund of the late-payment penalty.

DISPOSITION

Respondent's action denying appellants' claim for refund is sustained.

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Michael F. Geary
Administrative Law Judge

We concur:

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Erica Parker
Hearing Officer

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Sherlene Anne Ridenour
Administrative Law Judge

Date Issued: 6/10/2025