

**OFFICE OF TAX APPEALS**  
**STATE OF CALIFORNIA**

In the Matter of the Appeal of:	)	OTA Case No. 230814123
<b>S. TAUBE</b>	)	
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	)	
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**OPINION**

Representing the Parties:

For Appellant:	S. Taube
For Respondent:	Arathi Ramalingam, Attorney Cynthia Kent, Attorney Supervisor

S. KIM, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19324, S. Taube (appellant) appeals an action by the Franchise Tax Board (respondent) denying appellant's claim for refund of \$36,264.30 for the 2020 tax year.

Office of Tax Appeals (OTA) Panel Members Steven Kim, Amanda Vassigh, and Keith T. Long held a virtual oral hearing for this matter on April 23, 2025. At the conclusion of the hearing, the record was closed, and this matter was submitted for an opinion pursuant to California Code of Regulations, title 18, section 30209(b).

**ISSUE**

Whether appellant has demonstrated reasonable cause to abate the electronic payment (e-pay) penalty for the 2020 tax year.

**FACTUAL FINDINGS**

1. On June 15, 2009, appellant made an estimated tax payment for the 2009 tax year in the amount of \$50,000, triggering the e-pay requirement for all future tax payments.<sup>1</sup>
2. On April 15, 2022, appellant submitted an extension payment by check for the 2021 tax year in the amount of \$3,600,000.

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<sup>1</sup> See R&TC, § 19011.5(a).

3. Respondent issued appellant a State Income Tax Balance Due Notice imposing a mandatory e-pay penalty of \$36,000 plus applicable interest.<sup>2</sup>
4. Appellant sent respondent a letter requesting abatement of the e-pay penalty based on reasonable cause.<sup>3</sup>
5. Respondent issued appellant an Income Tax Due Notice, and then a Final Notice Before Levy and Lien.
6. On August 1, 2022, appellant made a payment of \$36,255.36. Appellant then timely filed a Reasonable Cause – Individual and Fiduciary Claim for Refund for the payment amount. Appellant also filed a Mandatory e-Pay Requirement – Waiver Request (Form FTB 4107).
7. Subsequently, respondent issued appellant a letter denying the waiver request. On August 1, 2023, respondent issued appellant a Notice of Action denying the claim for refund.
8. Appellant timely filed this appeal.

### DISCUSSION

Individual taxpayers are required to use e-pay if they make an estimated tax installment payment or extension payment of more than \$20,000 for any taxable year beginning on or after January 1, 2009, or if their total tax liability in any taxable year beginning on or after January 1, 2009, exceeds \$80,000. (R&TC, § 19011.5(a).) Individual taxpayers who 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,<sup>4</sup> or the taxpayer requests and receives a waiver of the e-pay requirement pursuant to R&TC section 19011.5(d).<sup>5</sup> Any taxpayer subject to the e-pay requirement who makes payment by other means must pay a one-percent e-pay penalty, unless

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<sup>2</sup> Respondent applied the penalty to appellant's 2020 tax year because appellant had not filed a tax return for the 2021 tax year at the time of the extension payment. Appellant also failed to use e-pay on several prior occasions and was assessed e-pay penalties on July 13, 2011, November 6, 2012, April 5, 2013, April 10, 2014, July 15, 2021, and November 2, 2021.

<sup>3</sup> The record does not show that respondent acknowledged or responded to appellant's letter.

<sup>4</sup> A taxpayer may elect to discontinue e-pay where the threshold requirements set forth in R&TC section 19011.5(a) were not met for the preceding tax year. (R&TC, § 19011.5(b).)

<sup>5</sup> Respondent may grant a waiver only if it determines that the particular amounts paid in excess of the threshold amounts established in R&TC section 19011.5(a) were not representative of the taxpayer's tax liability. (R&TC, § 19011.5(d).)

the taxpayer shows that the failure to use e-pay was the result of reasonable cause and was not due to willful neglect. (R&TC, § 19011.5(c).) In order to demonstrate reasonable cause, the taxpayer must show that the failure to make use e-pay occurred despite the exercise of ordinary business care and prudence. (See *Appeal of Porreca*, 2018-OTA-095P.) The taxpayer bears the burden of proving reasonable cause to abate the penalty, and unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*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.*)

Here, appellant does not dispute the imposition or computation of the e-pay penalty. Instead, appellant argues that reasonable cause exists to abate the e-pay penalty due to the following: (1) he had a business failure in 2020 giving rise to "phantom income" and the penalty amount is a very large amount; (2) he had lingering duress from a divorce process lasting over five years; (3) he is struggling with hypertension and diabetes; (4) the large tax payment was due to a Schedule K-1 he received just a few weeks before the payment was due and he did not have time to request a waiver before the extension payment due date; (5) he changed CPA firms for the 2020 tax year, and he did not see the new firm's directions to send payment via e-pay and made an honest mistake; and (6) this was a first time mistake, and he had no prior estimated tax installment payments or extension payments exceeding \$20,000 or total tax liability exceeding \$80,000. Appellant also argues that he timely made the extension payment and that the amount of the penalty is excessive, unduly burdensome, and out of proportion.

However, appellant made an estimated tax payment of \$50,000 for the 2009 tax year, triggering the e-pay requirement and requiring all future tax payments to be made using e-pay. (See R&TC, § 19011.5(a).) Furthermore, respondent assessed e-pay penalties upon appellant on six prior occasions before the penalty at issue here. Additionally, for the year at issue, appellant concedes that his CPA firm provided instruction to submit the extension payment via e-pay. Thus, appellant was informed that he was required to make electronic payments of tax. Even if appellant was unaware of the e-pay requirement, a taxpayer does not exercise ordinary business care and prudence when he fails to acquaint himself with the requirements of California tax law, and ignorance of the law is not reasonable cause for failure to comply with statutory requirements. (See *Appeal of Porreca*, *supra*.)

Appellant has not established how a business failure, duress from divorce, or health issues prevented him from using e-pay to make the extension payment. Appellant did not exercise ordinary business care and prudence by failing to use e-pay, especially considering appellant's prior e-pay penalties and his CPA's express instructions to pay via e-pay. While the


amount of the e-pay penalty is large, R&TC section 19011.5(c) requires the imposition of a one-percent e-pay penalty. Therefore, appellant has not shown that the failure to use e-pay was the result of reasonable cause and was not due to willful neglect.

HOLDING


Appellant has not demonstrated reasonable cause to abate the e-pay penalty.


DISPOSITION

Respondent's action is sustained.

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Steven Kim  
Administrative Law Judge

We concur:

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Amanda Vassigh  
Administrative Law Judge

DocuSigned by:  
  
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Keith T. Long  
Administrative Law Judge

Date Issued: 6/27/2025