

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:) OTA Case No. 18010906
)
HATLING & COMPANY, INC.) Date Issued: June 4, 2018
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OPINION

Representing the Parties:

For Appellant: Rebecca Hatling

For Franchise Tax Board: Bradley J. Coutinho, Tax Counsel

For Office of Tax Appeals: Linda Frenklak, Tax Counsel IV

D. BRAMHALL, Administrative Law Judge: Pursuant to Revenue and Taxation Code section 19324,¹ Hatling & Company, Inc. (appellant) appeals an action by the Franchise Tax Board (FTB or respondent) denying appellant’s claim for refund of \$495.09 for tax year 2015.²

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

ISSUES

1. Whether appellant has demonstrated that respondent erred by not abating the estimated tax penalty;
2. Whether appellant has shown reasonable cause for the abatement of the late payment penalty; and
3. Whether appellant is entitled to abatement of the collection cost recovery fee.

¹ Unless otherwise indicated, all statutory references are to sections of the Revenue and Taxation Code.

² According to respondent, the correct refund claim amount is \$471.01 consisting of a late payment penalty of \$84.00, an estimated tax penalty of \$22.01, and a collection cost recovery fee of \$365.00. Respondent asserts that the refund amount of \$495.09 listed on the appeal letter consists of the above stated amount of \$471.01 plus accrued interest of \$24.08. Respondent also asserts that at the conclusion of this appeal, it will refund the accrued interest of \$24.08 if it is determined that appellant is entitled to a refund of the imposed penalties.

FACTUAL FINDINGS

1. Appellant is an S corporation incorporated in Minnesota on November 20, 2002. Appellant began doing business in California on January 1, 2014. Appellant's principal business activity is delivery service. Appellant reports its income on a calendar year basis.
2. On August 25, 2016, appellant filed a California S Corporation Franchise or Income Tax Return (Form 100S) for 2015. On its 2015 return, appellant reported California net income of \$17,502, a minimum franchise tax of \$800, an overpayment from the prior year allowed as a credit of \$800, and a zero-balance due. Appellant did not report any 2015 estimated tax payments.
3. Respondent accepted appellant's 2015 return as filed. Respondent's records, however, did not show that appellant paid the \$800 minimum franchise tax for 2015.
4. Appellant subsequently acknowledged that it had inadvertently remitted web payments for the \$800 minimum franchise tax for 2015 and \$800 for 2016 estimated tax to the individual tax account of "Becky" Hatling, appellant's CFO, as opposed to appellant's corporate account.
5. Respondent sent appellant a Past Due Notice dated November 18, 2016. After appellant failed to pay the balance due, respondent sent appellant a Final Notice Before Levy dated December 23, 2016, which stated that if appellant did not pay the balance due by January 7, 2017, collection action would begin and a collection fee of \$365 would be imposed.
6. On February 14, 2017, appellant remitted total payments of \$2,118.63, which satisfied its 2015 balance due of \$1,295.09. The balance due of \$1,295.09 consists of tax of \$800.00, a late payment penalty of \$84.00, an estimated tax penalty of \$22.01, and a collection cost recovery fee of \$365.00, plus accrued interest of \$24.08. The excess was applied to tax and interest due for 2016.
7. On February 21, 2017, appellant filed a Reasonable Cause – Business Entity Claim for Refund (FTB Form 2924) for 2015. In appellant's refund claim, appellant's representative, Ms. Hatling, requested a refund of \$495.09 for "undeserved penalties and fees."
8. In a letter dated March 17, 2017, respondent informed appellant that it denied appellant's refund claim for 2015.

9. This timely appeal followed.

DISCUSSION

Issue 1 - Did respondent err in its denial of a refund of the estimated tax penalty?

A corporation subject to the minimum franchise tax must pay estimated tax each year. (Sections 19023, 19025.) A corporation is required to pay at least the entire amount of the minimum franchise tax as an estimated tax payment on or before the 15th day of the fourth month of the tax year. (Section 19025(a).) There is no dispute in this case as to the amount or timing of the required estimated tax payment.

Section 19142 provides that, when there is an underpayment of the estimated tax, an amount shall be added to the tax based on the amount of the underpayment for the period of the underpayment. The imposition of the estimated tax penalty is mandatory when there has been an underpayment of estimated taxes. (*Appeal of Weaver Equipment*, 80-SBE-048, May 21, 1980.)³ There is no reasonable cause exception to the estimated tax penalty. (*Id.*)

Because appellant reports its income on a calendar year basis, it was required to pay the entire amount of the minimum franchise tax of \$800 for 2015 by April 15, 2015. (Sections 19023, 19025.) Appellant did not remit a payment for the minimum franchise tax due for 2015 until February 14, 2017. Respondent thus properly imposed the estimated tax penalty for 2015. Appellant does not dispute that respondent correctly calculated the amount of the penalty.

Respondent does not dispute that on April 6, 2015, Ms. Hatling inadvertently remitted an online payment of \$800 for her individual 2015 tax account,⁴ rather than appellant's 2015 tax account. Appellant argues that this inadvertence should be overlooked and seemingly that the payment should be treated as made by appellant. However, appellant's corporate tax account and Ms. Hatling's individual tax account are separate and funds are not commingled between them. Respondent applied the payments to Ms. Hatling's individual account as inadvertently

³ Pursuant to the Office of Tax Appeals Rules for Tax Appeals, California Code of Regulations, tit. 18, § 30501(d)(3), precedential opinions of the State Board of Equalization (BOE) that were adopted prior to January 1, 2018, may be cited as precedential authority to the Office of Tax Appeals unless a panel removes, in whole or in part, the precedential status of the opinion. BOE's precedential opinions are available for viewing on the BOE's website: <http://www.boe.ca.gov/legal/legalopcont.htm#boeopinion>

⁴ Ms. Hatling may be entitled to a refund of the misapplied funds if the statute of limitations for doing so is open and the funds have not been applied to her individual California tax liability, if any.

instructed by her, and thus appellant's account was underpaid. Accordingly, respondent properly imposed the estimated tax penalty.

Issue 2 – Did appellant establish reasonable cause for the abatement of the late payment penalty?

A late payment penalty is imposed when a taxpayer fails to pay the amount shown as due on the return on or before the date prescribed for the payment of that tax. (Section 19132(a).)

Generally, the date prescribed for the payment of the tax is the due date of the return without regard to extension of time for filing the return. (Section 19001.) An S corporation is required to file its tax return on or before the 15th day of the third month following the close of its tax year. (Section 18601(a).)⁵ A taxpayer may extend the time for filing a return, but an extension of time to file a return does not extend the time for payment of tax required to be paid on or before the due date of the return without regard to an extension. (Section 18604(b).) The late payment penalty is calculated as 5 percent of the total tax unpaid plus one-half of one percent for every month the payment of tax is late, not to exceed 40 months. (Section 19132(a)(2).)

The penalty may be abated if the taxpayer establishes that the failure to make a timely payment of tax was due to reasonable cause and not due to willful neglect. (Section 19132(a).) The taxpayer bears the burden of proving that both of these conditions exist. (*Appeal of Roger W. Sleight*, 83-SBE-244, Oct. 26, 1983.) Reasonable cause requires a showing that the taxpayer acted as an ordinarily intelligent and prudent businessperson would have acted under similar circumstances. (*Appeal of Robert T. and M. R. Curry*, 86-SBE-048, Mar. 4, 1986; *Appeal of Howard G. and Mary Tons*, 79-SBE-027, Jan. 9, 1979.) In other words, a taxpayer must show that the failure to timely pay tax occurred despite the exercise of ordinary business care and prudence. (*Appeal of Stephen C. Bieneman*, 82-SBE-148, July 26, 1982; *Appeal of Howard G. and Mary Tons, supra.*)

Appellant was required to pay its tax liability for 2015 on or before March 15, 2016. (Sections 19001, 18601.) Respondent properly imposed a late payment penalty because

⁵ As in effect for tax year 2015, section 18601(a) provided that a corporation shall file its return on or before the 15th day of the third month following the close of its tax year. This statute was amended by Ch. 348 (A.B. 1775), Laws 2016, effective January 1, 2017, applicable to returns for tax years beginning on or after January 1, 2016. As amended, section 18601(d)(1) provides that an S corporation shall file a return on or before the 15th day of the third month following the close of its tax year.

appellant failed to pay its tax liability for 2015 until February 14, 2017.⁶ Appellant does not dispute that respondent correctly calculated the amount of the late payment penalty. We are sympathetic to the fact that Ms. Hatling inadvertently remitted appellant's minimum franchise tax for 2015 to her individual tax account on April 6, 2015. However, even if properly applied, the payment was made after the March 15th due date. Appellant does not contend, and the evidence does not indicate, that appellant took any measures prior to the tax payment deadline of March 15, 2016, to ensure that its April 6, 2015 payment was properly applied to its 2015 tax account. Instead, appellant asserted in its refund claim that Ms. Hatling unsuccessfully tried to contact respondent after appellant received the balance due notices. Appellant has therefore not shown that it exercised ordinary business care and prudence on or before the payment due date. Appellant is not entitled to abatement of the late payment penalty because it has not established that its failure to timely pay its tax for 2015 was due to reasonable cause.

Issue 3 – Is appellant entitled to an abatement of the collection cost recovery fee?

Section 19254(a), provides that, if a taxpayer fails to pay a liability for taxes, penalties, interest, or another liability, a collection cost recovery fee shall be imposed if respondent has mailed a notice for payment that advises that the continued failure to pay the amount due may result in a collection action, including the imposition of a collection cost recovery fee. There is no reasonable cause exception or any other provision in the statute allowing for relief from the imposition of the collection cost recovery fee. (*Appeal of Michael E. Myers*, 2001-SBE-001, May 31, 2001.)

Respondent issued a notice to appellant on December 23, 2016, that advised appellant that a collection cost recovery fee of \$365 may be imposed if appellant did not pay the balance due by January 7, 2017. Respondent properly imposed a collection cost recovery fee under R&TC section 19254 because appellant failed to pay its 2015 balance by the January 7, 2017 deadline set forth in the December 23, 2016 Final Notice Before Levy. While appellant alleges that Ms. Hatling attempted to discuss the misapplied payment prior to January 7, 2007, there is no assertion or evidence that a proper payment was made before that date. Once a collection cost recovery fee is properly imposed, there is no statutory provision that authorizes the abatement of

⁶ Respondent calculated a late payment penalty of \$84 based on five percent of the unpaid tax of \$800 (\$40) plus one-half of one percent of the unpaid tax of \$800 times 11 months from the due date of March 15, 2016, to the payment date of February 14, 2017 (\$44). (Section 19132(a)(2).)

the collection cost recovery fee for any reason, including reasonable cause. Appellant is therefore not entitled to an abatement of the collection cost recovery fee based on a showing that the 2015 tax payment was inadvertently misapplied to the wrong tax account.

HOLDINGS

1. Appellant has failed to show that respondent erred in denying a refund of the estimated tax penalty.
2. Appellant has failed to establish reasonable cause for the abatement of the late payment penalty.
3. Appellant has failed to show respondent erred in denying a refund of the collection cost recovery fee.

DISPOSITION

The action of the respondent is sustained.

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 Douglas Bramhall
 Administrative Law Judge

We concur:

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 Teresa A. Stanley
 Administrative Law Judge

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 Alberto T. Rosas
 Administrative Law Judge