

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)	OTA Case No. 18010904
)	
BUSINESSSOFT, INC.)	Date Issued: August 27, 2018
)	
)	
)	

OPINION

Representing the Parties:

For Appellants: Rejy Mathen, President

For Respondent: Kenneth A. Davis, Tax Counsel IV

J. ANGEJA, Administrative Law Judge: Pursuant to Revenue and Taxation Code section 19324,¹ BusinessSoft, Inc. (appellant) appeals an action by the Franchise Tax Board (FTB or respondent) in denying appellant’s claims for refund in the amount of \$750.42 for the 2011 tax year and \$381.19 for the 2014 tax year.

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 shown reasonable cause to abate the late-filing penalties imposed under Sections 19131 & 19172.5 for the 2011 tax year.
2. Whether appellant has shown reasonable cause to abate the late-payment penalty imposed under Section 19132 for the 2014 tax year.
3. Whether appellant has established that the underpayment of estimated tax penalties imposed under Section 19142 for the 2011 and 2014 tax years should be abated.
4. Whether appellant has established that interest should be abated.
5. Whether appellant has established that the collection cost recovery fee should be abated.

¹ Unless otherwise indicated, all “Section” references are to sections of the California Revenue and Taxation Code.

FACTUAL FINDINGS

1. Appellant is a Texas corporation that also does business in California, and elected to be treated as an “S” corporation for tax purposes. For appellant’s 2011 tax year, appellant did not timely file its 2011 California S Corporation Tax Return (California Form 100S), which was due on March 15, 2012. FTB received appellant’s 2011 tax return on September 29, 2014. Appellant’s 2011 return stated a self-assessed tax liability of \$826, and listed appellant’s address as 2111 Asbury Ct., Pearland, Texas 77581. FTB imposed an estimated tax penalty under Section 19142, as well as late-filing penalties under Sections 19131 and 19172.5 for the 2011 tax year. On October 2, 2014, FTB received a check from appellant in the amount of \$826, which FTB applied to the 2011 year.
2. Beginning on December 10, 2014, and continuing into 2015, FTB sent six notices of balance due to appellant, and each was addressed to appellant at its Texas address. Thereafter, appellant paid the balance in full, and on October 31, 2016, appellant filed a timely claim for refund requesting abatement of the penalties and the relief of interest. FTB denied the claim and this timely appeal followed.
3. For appellant’s 2014 tax year, appellant filed its 2014 California Form 100S, which was due on March 16, 2015, on April 2, 2015, within the automatic extension period. Appellant’s return stated a self-assessed tax liability of \$822, and listed appellant’s address as 2111 Asbury Ct., Pearland, Texas 77581. On April 10, 2015, FTB received a check from appellant in the amount of \$822, which FTB applied to the 2014 year. FTB imposed an estimated tax penalty and late-payment penalty against appellant for the 2014 tax year.
4. Beginning on May 13, 2015, FTB sent four notices of balance due to appellant, and each was addressed to appellant at its Texas address. Thereafter, appellant paid the balance in full, and on October 31, 2016, appellant filed a timely claim for refund requesting abatement of the penalties and the relief of interest. FTB denied the claim and this timely appeal followed.
5. In its claims for refund, appellant asserts that it suffered a financial hardship for the years at issue, although appellant asserts that such hardship occurred *prior* to September 2011 and *after* June 30, 2017. Appellant also states that it did not receive FTB’s notices mailed to the Texas address because appellant’s agent did not forward the notices to

appellant's shareholder in California. Appellant also asserts that FTB should have sent the notices of balance due to appellant at its California address because appellant sent letters to FTB dated September 26 and November 14, 2014, which listed appellant's address as 20200 Lucille Ave., Suite 24, Cupertino, California. Appellant asserts that these letters should have been sufficient to cause FTB to change appellant's address of record from the Pearland, Texas location to the Cupertino, California location, but admits appellant mistakenly listed Texas as appellant's address on its tax returns. Nevertheless, on its 2015 tax return, which was filed in 2016, appellant again lists its Texas address, not its California address.

DISCUSSION

Issues 1 & 2 - Whether appellant has shown reasonable cause to abate the late-filing penalties imposed under Sections 19131 & 19172.5 for the 2011 tax year, and the late-payment penalty imposed under Section 19132 for the 2014 tax year.

2011 Tax Year

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. (§ 18601(a).) Section 18604(a) provides that FTB may grant a taxpayer a reasonable extension of time to file a return, not to exceed seven months after the due date for filing a return. The Revenue and Taxation Code contains two penalties that are applicable to late-filed subchapter S corporation returns. The first penalty, under Section 19131, is computed with reference to the amount of the corporation's tax shown on the return. The penalty is five (5) percent of the amount of tax required to be shown on the return for every month that the return is late, up to a maximum of 25 percent. (§ 19131(a).) For purposes of calculating this penalty, the amount of tax required to be shown on the return is reduced by any timely paid tax amounts, and any credits against the tax which may be claimed on the return. (§ 19131(c).) Accordingly, FTB imposed a penalty against appellant under Section 19131 for 2011 of \$200 (appellant's \$800 minimum tax liability times 25 percent).

The second penalty, under Section 19172.5, takes into account the fact that a subchapter S corporation is a pass-through entity. It imposes a penalty against a subchapter S corporation based upon the number of its pass-through shareholders and the lateness of the return. The penalty is computed as follows: \$18 per month per subchapter S shareholder for a maximum of

12 months. Here, appellant's 2011 return was filed more than twelve months late, so the penalty imposed under Section 19172.5 was \$432 (\$18 times 2 members/shareholders times 12 months) for the 2011 tax year.

2014 Tax Year

The Revenue and Taxation Code also imposes a late-payment penalty for a taxpayer's failure to pay the amount of tax shown on a return on or before the due date. (§ 19132(a)(1).) The late-payment penalty is the sum of two figures that may not exceed 25 percent of the unpaid tax. (§ 19132(a)(2).) The first addend is five percent of the tax that remained unpaid as of the due date. (§ 19132(a)(2)(A).) The second addend is .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. (§ 19132(a)(2)(B).) For these purposes, the due date for payment of the tax is determined without regard to any extension of time to file the return. (§ 19001.) Here, FTB imposed a late-payment penalty of \$44 for the 2014 tax year.

Appellant does not protest the imposition or calculation of the penalties, but asserts that they should be abated based upon reasonable cause. For purposes of abatement of the foregoing penalties, reasonable cause requires a showing that the taxpayer acted as an ordinarily intelligent and prudent businessperson would have acted under similar circumstances.² (*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.)³ In other words, a taxpayer must show that the failure to file the return 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.*) Each taxpayer has a personal, non-delegable obligation to file a tax return by the due date. (*United States v. Boyle* (1985) 469 U.S. 241, 251.) Ignorance of the law is not an excuse for failing to file a timely return. (See *Appeal of Diebold, Inc.*, 83-SBE-002, Jan. 3, 1983; *Appeal of J. Morris and Leila G. Forbes*, 67-SBE-042, Aug. 7, 1967.) The burden is on the taxpayer to prove that the difficulties experienced prevented the taxpayer from filing a timely return. (*Appeal of David and Marliee Duff*, 2001-SBE-007, Dec. 20, 2001.)

² Although there are no formal Board decisions or case law decisions interpreting the reasonable cause abatement provision of Section 19172.5, the provisions of Section 19131, allowing for the abatement of the late-filing penalty due to reasonable cause, are substantially identical and relate to the same subject matter.

³ Published decisions of the Board of Equalization, designated by "SBE" in the citation, are available on that Board's website at: <http://www.boe.ca.gov/legal/legalopcont.htm>.

Here, appellant has offered no explanation as to why it filed its 2011 tax return late, or why it failed to timely pay the tax for the 2014 tax year. Appellant argues that it did not receive FTB's multiple notices of balance due, but appellant admits that its own agent at the Texas mailing address did not forward them to appellant's shareholder located in California. Appellant asserts that it suffered financial hardship prior to September 2011 and after June 2017, but there is no allegation of hardship at the time the tax returns at issue were due, and appellant has not explained how any alleged hardship prevented it from timely filing its 2011 tax return or timely paying its 2014 tax.

Next, appellant's claim that the notices were sent to an improper address does not explain appellant's failure to timely file its 2011 tax return and/or timely pay the 2014 tax liability. Appellant's failure to timely file its 2011 tax return and pay the 2014 tax appears to have been due to appellant's own conduct, both *prior* to and *after* any notices of the penalty being mailed. And, appellant continued to use its Texas address on tax returns filed both before and after FTB's notices were sent to it. Therefore, FTB's mailing of notices to appellant's address of record in Texas, long after appellant's returns were due, provides no basis on which to abate the penalties.

Although the foregoing is dispositive of this contention, we also note that FTB sent all of the notices to appellant's address of record, as shown on appellant's 2011, 2014, and 2015 tax returns. Any notice shall be sufficient if it is mailed to a taxpayer's last-known address. (§ 18416(b), (c).) It is well settled that respondent's mailing of a notice to the taxpayer's last-known address is considered sufficient notification even if the notice never actually reaches the taxpayer. (*Appeal of Yvonne M. Goodwin*, 97-SBE-003, Mar. 19, 1997; *Appeal of Jon W. and Antoinette O. Johnston*, 83-SBE-238, Oct. 26, 1983.) The last-known address is the address that appears on the taxpayer's last return filed with respondent, unless the taxpayer has provided to FTB a clear and concise written or electronic notification of a different address, or FTB has an address it has reason to believe is the most current address for the taxpayer. (§ 18416(c).) Here, appellant's September 26 and November 14, 2014 letters to FTB merely listed a California return mail address and did not advise FTB of a change to appellant's address of record. Accordingly, the letters were insufficient to change appellant's address of record with FTB.

Issue 3 - Whether appellant has established that the underpayment of estimated tax penalties imposed under Section 19142 for the 2011 and 2014 tax years should be abated.

A corporation subject to the tax imposed by Part 11 of the Revenue and Taxation Code must file a declaration of estimated tax and pay the estimated tax for each year. (§§ 19025, 19142 *et seq.*) If the amount of estimated tax does not exceed the minimum franchise tax, the entire amount of the estimated tax shall be due and payable on or before the fifteenth day of the fourth month of the taxable year. (§ 19025(a).) A corporation that underpays its estimated tax is liable for an addition to tax (i.e., a penalty) equal to a specified rate of interest applied to the amount of the underpayment. (§§ 19142, 19144.) The underpayment of estimated tax penalty is properly imposed where the taxpayer's installment payments are less than the amounts due at the end of the installment periods. (*Appeal of Bechtel, Inc.*, 78-SBE-052, July 26, 1978.) There is no general reasonable cause exception to the penalty. (*Appeal of Weaver Equipment Co.*, 80-SBE-048, May 21, 1980.) There are a few limited statutory exceptions to the penalty (see § 19147), but there is no argument or evidence that any of these exceptions apply. Appellant did not make any timely estimated payments. Therefore, the estimated tax penalty was properly imposed, and there is no basis on which to abate the penalty for underpayment of estimated tax.

Issue 4 - Whether appellant has established that interest should be abated.

Sections 19001 and 19101 provide that taxes are due and payable as of the original due date of the taxpayer's return (without regard to extension). If tax is not paid by the original due date, interest is charged on the balance due. (§ 19101.) The imposition of interest is mandatory. (*Appeal of Amy M. Yamachi* 77-SBE-095, June 28, 1977; *Appeal of Audrey C. Jaegle*, 76-SBE-070, June 22, 1976.) Interest is not a penalty but is merely compensation for a taxpayer's use of the money after the due date of the tax. (*Appeal of Audrey C. Jaegle, supra.*) There is no reasonable cause exception to the imposition of interest. (*Appeal of John M. Shubert*, 79-SBE-161, Sept. 25, 1979.)

Section 19104 addresses interest abatement when the interest is attributable in whole or in part to an unreasonable error or delay committed by an officer or employee of the FTB in the performance of a ministerial or managerial act. (§ 19104(a)(1).) An error or delay can only be considered as warranting relief when no significant aspect of the error or delay is attributable to the taxpayer and after the FTB has contacted the taxpayer in writing with respect to the

deficiency or payment. (§ 19104(b)(1).) This agency's jurisdiction for interest abatement is limited by statute to a review of the FTB's determination for an abuse of discretion.

(§ 19104(b)(2)(B).)

Here, the interest that has accrued for the 2011 and 2014 tax years is the result of the delay in appellant's payment of its tax liabilities for those years. We note that FTB's notices of balance due were properly mailed to appellant's address of record, *after* the tax was due, and those notices were not the cause of appellant's failure to pay the taxes when due. In other words, there was no delay or error *by FTB* that caused the interest to accrue. Since the assessment of interest is mandatory and there is no showing that appellant meets the limited circumstances that would allow for interest abatement, there is no basis on which to abate interest.

Issue 5 - Whether appellant has established that the collection cost recovery fee should be abated.

Section 19254(a)(1) provides that a collection cost recovery fee shall be imposed if FTB mails a notice that continued failure to pay an amount due may result in the imposition of such a fee. Once properly imposed, the statute provides no grounds upon which the fee may be abated. (§ 19254.)

Here, in multiple notices mailed to appellant, FTB advised appellant that a collection cost recovery fee would be imposed for 2014 if appellant failed to pay the balance due. Appellant did not timely pay that liability. Therefore, FTB properly imposed the fee, and there is no basis for abating them.

HOLDINGS

1. Appellant has not shown reasonable cause to abate the late-filing penalties imposed under Sections 19131 & 19172.5 for the 2011 tax year.
2. Appellant has not shown reasonable cause to abate the late-payment penalty imposed under Section 19132 for the 2014 tax year.
3. Appellant has not shown that the underpayment of estimated tax penalties imposed under Section 19142 for the 2011 and 2014 tax years should be abated.
4. Appellant has not established that interest should be abated.
5. Appellant has not established that the collection cost recovery fee should be abated.

DISPOSITION

Respondent's action in denying appellant's claim for refund is sustained.

DocuSigned by:

Jeff Angeja

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Jeffrey G. Angeja
Administrative Law Judge

We concur:

DocuSigned by:

Nguyen Dang

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Nguyen Dang
Administrative Law Judge

DocuSigned by:

Tommy Leung

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Tommy Leung
Administrative Law Judge